

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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SIXTY-EIGHTH DAY

(Thursday, May 26, 2011)

The Senate met at 1:40 p.m. pursuant to adjournment and was called to order by President Pro Tempore Ogden.

The roll was called and the following Senators were present: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President Pro Tempore announced that a quorum of the Senate was present.

Pastor Danny Green, Covenant Family Church, College Station, was introduced by Senator Eltife, on behalf of Senator Ogden, and offered the invocation as follows:

Merciful God, we humbly yet confidently stand before You today giving honor and all glory to You for Your overwhelming love and grace. We come before You realizing how much we need Your guidance and Your almighty hand upon us as we exercise wisdom and courage to uphold this our Constitution which established a republic based on Your absolute truth and laws. Heavenly Father, it is You who gives us the strength to represent those who have trusted us to be in this place to make the decisions for a better, safer, and healthier community. I ask that each of us here today will understand and follow the principles written in Your word. May we realize that all authority comes from You and that one day we will give account of how we used that authority. Teach us to ever be aware of those we've been called to serve. May we not forget the sacredness of our vow, the power of our promise, and the purpose of our position. Remind us to protect those who need it most, to love those who are neglected, and to empower those who will make a positive difference for all. Bless each of us who have been sent here to direct this great State of Texas to the center of Your will. I thank You for sending Your son, Jesus, to be our Lord and Savior. Search us, O God, and know our hearts; cleanse us from every sin and make us free. We sincerely ask these things in His name, Jesus Christ our Lord. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the previous day be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

**MESSAGE FROM THE HOUSE****HOUSE CHAMBER**

Austin, Texas

Thursday, May 26, 2011 - 1

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**SCR 56**

Fraser

Sponsor: Miller, Sid

Honoring John Cowan on the occasion of his retirement from the Texas Association of Dairymen.

THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 968** (143 Yeas, 0 Nays, 2 Present, not voting)**HB 1768** (140 Yeas, 1 Nays, 2 Present, not voting)**HB 2277** (134 Yeas, 7 Nays, 2 Present, not voting)**HB 2449** (140 Yeas, 1 Nays, 2 Present, not voting)**HB 2466** (140 Yeas, 0 Nays, 2 Present, not voting)**HB 2592** (117 Yeas, 28 Nays, 2 Present, not voting)**HB 2663** (144 Yeas, 0 Nays, 2 Present, not voting)**HB 2779** (146 Yeas, 0 Nays, 2 Present, not voting)**HB 3647** (139 Yeas, 1 Nays, 2 Present, not voting)**HB 3819** (146 Yeas, 0 Nays, 1 Present, not voting)**HB 3828** (137 Yeas, 2 Nays, 2 Present, not voting)

THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**HB 628** (non-record vote)

House Conferees: Callegari - Chair/Hunter/King, Phil/Lucio III/Smith, Wayne

**HB 2357** (non-record vote)

House Conferees: Pickett - Chair/Bonnen/Hunter/Lavender/Phillips

**HB 2380** (non-record vote)

House Conferees: Shelton - Chair/Frullo/Patrick, Diane/Reynolds/Villarreal

**HB 3268** (non-record vote)

House Conferees: Lyne - Chair/Geren/Hancock/Hardcastle/King, Tracy O.

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 89** (non-record vote)

House Conferees: Rodriguez, Eddie - Chair/Hughes/Isaac/Lozano/Miles

**SB 249** (non-record vote)

House Conferees: Orr - Chair/Anchia/Flynn/Legler/Truitt

**SB 958** (non-record vote)

House Conferees: Larson - Chair/Guillen/Kuempel/Price/Rodriguez, Eddie

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**GUESTS PRESENTED**

Senator Ellis was recognized and introduced to the Senate Gary Elkins and winners of the African American National Spelling Bee Championships: Mary Bello (First Place); Ashley Williams (Second Place); Niaha Dyson (Third Place); accompanied by Robert Garner, Jr., founder; Jacqueline Terrell, Executive Director; and Brenda Upton, teacher.

The Senate welcomed its guests.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Thursday, May 26, 2011 - 2

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS RECOMMITTED THE FOLLOWING MEASURES TO CONFERENCE COMMITTEE:

**SB 316** (146 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### PHYSICIAN OF THE DAY

Senator Hegar was recognized and presented Dr. Jorge Duchicela of Weimar as the Physician of the Day.

The Senate welcomed Dr. Duchicela and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

### CONFERENCE COMMITTEE ON HOUSE BILL 2605

Senator Huffman called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2605** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2605** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Huffman, Chair; Hegar, Hinojosa, Nelson, and Whitmire.

### CONFERENCE COMMITTEE ON HOUSE BILL 90

Senator Birdwell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 90** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 90** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Birdwell, Chair; Williams, Nichols, Watson, and Patrick.

### CONFERENCE COMMITTEE ON HOUSE BILL 1178

Senator Birdwell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1178** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1178** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Birdwell, Chair; Van de Putte, Seliger, Estes, and Harris.

**SENATE BILL 1588 WITH HOUSE AMENDMENTS**  
**(Motion In Writing)**

Senator Ogden called **SB 1588** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 1588** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED**  
**AN ACT**

relating to the creation and re-creation of funds and accounts, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITION. In any provision of this Act that does not amend current law, "state agency" means an office, institution, or other agency that is in the executive branch or judicial branch of state government, has authority that is not limited to a geographical portion of the state, and was created by the constitution or a statute of this state. The term does not include an institution of higher education as defined by Section 61.003, Education Code.

SECTION 2. ABOLITION OF FUNDS, ACCOUNTS, AND DEDICATIONS. Except as otherwise specifically provided by this Act, all funds and accounts created or re-created by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law and all dedications or rededications of revenue or otherwise collected by a state agency for a particular purpose by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law are abolished on the later of August 31, 2011, or the date the Act creating or re-creating the fund or account or dedicating or rededicating revenue takes effect.

SECTION 3. PREVIOUSLY EXEMPT DEDICATIONS, FUNDS, AND ACCOUNTS. Section 2 of this Act does not apply to:

(1) statutory dedications, funds, and accounts that were enacted before the 82nd Legislature convened to comply with requirements of state constitutional or federal law;

(2) dedications, funds, or accounts that remained exempt from former Subsection (h), Section 403.094, Government Code, at the time dedications, accounts, and funds were abolished under that provision;

(3) increases in fees or in other revenue dedicated as described by this section; or

(4) increases in fees or in other revenue required to be deposited in a fund or account described by this section.

SECTION 4. FEDERAL FUNDS. Section 2 of this Act does not apply to funds created pursuant to an Act of the 82nd Legislature, Regular Session, 2011, for which separate accounting is required by federal law, except that the funds shall be deposited in accounts in the general revenue fund unless otherwise required by federal law.

SECTION 5. TRUST FUNDS. Section 2 of this Act does not apply to trust funds or dedicated revenue deposited to trust funds created under an Act of the 82nd Legislature, Regular Session, 2011, except that the trust funds shall be held in the state treasury, with the comptroller of public accounts in trust, or outside the state treasury with the comptroller's approval.

SECTION 6. BOND FUNDS. Section 2 of this Act does not apply to bond funds and pledged funds created or affected by an Act of the 82nd Legislature, Regular Session, 2011, except that the funds shall be held in the state treasury, with the comptroller of public accounts in trust, or outside the state treasury with the comptroller's approval.

SECTION 7. CONSTITUTIONAL FUNDS. Section 2 of this Act does not apply to funds or accounts that would be created or re-created by the Texas Constitution or revenue that would be dedicated or rededicated by the Texas Constitution under a constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, or to dedicated revenue deposited to funds or accounts that would be so created or re-created, if the constitutional amendment is approved by the voters.

SECTION 8. CREATION OF NEW ACCOUNTS FOR LICENSE PLATE FEES. Section 2 of this Act does not apply to a new account created in the general revenue fund for receipt of fees for special license plates or for receipt of related revenue, gifts, or grants as provided by an Act of the 82nd Legislature, Regular Session, 2011, or to the dedication of revenue to or contained in the new account.

SECTION 9. ADDITIONAL USES FOR DEDICATED FUNDS, ACCOUNTS, OR REVENUES. Section 2 of this Act does not apply to a newly authorized dedication of or use of a dedicated fund, a dedicated account, or dedicated revenues as provided by an Act of the 82nd Legislature, Regular Session, 2011, to the extent that Act affects a fund, an account, or revenues that were exempted from funds consolidation before January 1, 2011. A dedicated fund, a dedicated account, or dedicated revenues that were exempted from funds consolidation before January 1, 2011, may be used as an Act of the 82nd Legislature, Regular Session, 2011, provides, and a change in the name or authorized use of a previously exempted dedicated fund or account does not affect the fund's or account's dedicated nature.

SECTION 10. ACCOUNTS IN GENERAL REVENUE FUND. Effective on the later of the effective date of the Act creating or re-creating the account or August 31, 2011, the following accounts and the revenue deposited to the credit of the accounts are exempt from Section 2 of this Act and are created in the general revenue fund, if created or re-created by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law:

(1) the driver's license system improvement account created as a dedicated account in the general revenue fund by Senate Bill No. 9, Senate Bill No. 1583, or similar legislation;

(2) the judicial and court personnel training fund created as a dedicated account in the general revenue fund by Senate Bill No. 1582, Senate Bill No. 1811, House Bill No. 3648, or similar legislation;

(3) the oil and gas regulation and cleanup fund created by Senate Bill No. 655, Senate Bill No. 1584, House Bill No. 3106, or similar legislation, except that, regardless of any provision of that legislation, the oil and gas regulation and cleanup fund is created as a dedicated account in the general revenue fund;

(4) the fund for veterans' assistance re-created as a special fund in the state treasury outside the general revenue fund by Senate Bill No. 1635, Senate Bill No. 1739, House Bill No. 1172, House Bill No. 3179, or similar legislation; and

(5) the judicial access and improvement account created as a dedicated account in the general revenue fund by Senate Bill No. 1811, House Bill No. 2174, or similar legislation.

SECTION 11. REVENUE DEDICATION. Effective on the later of the effective date of the Act dedicating or rededicating the revenue or August 31, 2011, the following dedications or rededications of revenue collected by a state agency for a particular purpose are exempt from Section 2 of this Act, if dedicated or rededicated by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law:

(1) the dedication of all fees to be deposited to the credit of the driver's license system improvement account as provided by Senate Bill No. 9, Senate Bill No. 1583, or similar legislation;

(2) the dedication of amounts to be deposited to the credit of the charter district bond guarantee reserve fund as provided by Senate Bill No. 597, House Bill No. 1437, or similar legislation;

(3) the dedication of charges collected under Subsection (g), Section 151.158, Tax Code, as provided by Senate Bill No. 776, Senate Bill No. 1811, or similar legislation;

(4) the dedication of the additional annual fee to be deposited to the credit of the scholarship trust fund for fifth-year accounting students as provided by Senate Bill No. 777, House Bill No. 1521, or similar legislation;

(5) the dedication of fees imposed under Subsection (a), Section 2054.380, Government Code, as provided by Senate Bill No. 1579, House Bill No. 3665, or similar legislation;

(6) the dedication of fees to be charged for process server certification and renewal of certification as provided by Senate Bill No. 1582, Senate Bill No. 1811, House Bill No. 1614, House Bill No. 3648, or similar legislation;

(7) all dedications of revenue for deposit to the credit of the oil and gas regulation and cleanup fund as provided by Senate Bill No. 655, Senate Bill No. 1584, House Bill No. 3106, or similar legislation;

(8) the dedication of the enrollment fees to be deposited to the credit of the employees life, accident, and health insurance and benefits fund under Section 1551.3076, Insurance Code, as provided by Senate Bill No. 1664, Senate Bill No. 1811, or similar legislation;

(9) the dedication of contributions made under Section 502.1746, Transportation Code, as provided by Senate Bill No. 1635, House Bill No. 3179, or similar legislation;

(10) the dedication of contributions, gifts, grants, and promotional campaign proceeds received by the Parks and Wildlife Department under Subchapter J-1, Chapter 11, Parks and Wildlife Code, as provided by Senate Bill No. 1584, House Bill No. 1300, House Bill No. 3418, or similar legislation;

(11) the dedication of licensing fees received under Section 13.0155, Parks and Wildlife Code, as provided by Senate Bill No. 1584, House Bill No. 1300, House Bill No. 3418, or similar legislation;

(12) the dedication of contributions received under Section 502.1747, Transportation Code, as provided by Senate Bill No. 1584, House Bill No. 1301, House Bill No. 3418, or similar legislation;

(13) the dedication of all fees to be deposited to the credit of the sexual assault program fund as provided by Senate Bill No. 23 or similar legislation;

(14) the dedication of fees imposed under Subsection (b), Section 1104.052, Occupations Code, as provided by House Bill 1146, or similar legislation;

(15) all dedications or rededications of revenue to an account of a Self-Directed, Semi-Independent Agency with the Texas Safekeeping Trust Company by any Act of the 82nd Legislature, Regular Session, 2011;

(16) all dedications or rededications of revenue to the Texas Department of Insurance Operating Account by any Act of the 82nd Legislature, Regular Session, 2011;

(17) all dedications or rededications of revenue to the State Highway Fund by any Act of the 82nd Legislature, Regular Session, 2011; and

(18) all dedications or rededications of revenue to the Game, Fish, and Water Safety Account by any Act of the 82nd Legislature, Regular Session, 2011.

SECTION 12. SEPARATE FUNDS IN THE TREASURY. Effective September 1, 2011, the following funds in the state treasury and the revenue deposited to the credit of the funds, if created by an Act of the 82nd Legislature, Regular Session, 2011, are exempt from Section 2 of this Act and the funds are created as separate funds in the state treasury:

(1) the charter district bond guarantee reserve fund, created as a special fund in the state treasury outside the general revenue fund by Senate Bill No. 597, House Bill No. 1437, or similar legislation; and

(2) the Internet crimes against children account created as a special fund by Senate Bill No. 1843, House Bill No. 3746, or similar legislation.

SECTION 13. SCHOLARSHIP TRUST FUND FOR FIFTH-YEAR ACCOUNTING STUDENTS. (a) Section 2 of this Act does not apply to the scholarship trust fund for fifth-year accounting students re-created as a trust fund outside the state treasury by Senate Bill No. 777, House Bill No. 1521, or similar legislation.

(b) The scholarship trust fund for fifth-year accounting students described by Subsection (a) of this section is subject to Section 5 of this Act.

SECTION 14. CIVIL JUSTICE DATA REPOSITORY FUND. Effective on the later of August 31, 2011, or the date the Act creating or re-creating the fund takes effect, the Civil Justice Data Repository fund and the revenue deposited to the credit



of the fund are exempt from Section 2 of this Act and that fund is created as an account in the general revenue fund, if created or re-created by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law.

SECTION 15. AMENDMENT OF SECTION 403.095, GOVERNMENT CODE. Effective September 1, 2011, Subsections (b), (d), and (e), Section 403.095, Government Code, are amended to read as follows:

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, on August 31, 2013 [~~2011~~], are estimated to exceed the amount appropriated by the General Appropriations Act or other laws enacted by the 82nd [~~81st~~] Legislature are available for general governmental purposes and are considered available for the purpose of certification under Section 403.121.

(d) Following certification of the General Appropriations Act and other appropriations measures enacted by the 82nd [~~81st~~] Legislature, the comptroller shall reduce each dedicated account as directed by the legislature by an amount that may not exceed the amount by which estimated revenues and unobligated balances exceed appropriations. The reductions may be made in the amounts and at the times necessary for cash flow considerations to allow all the dedicated accounts to maintain adequate cash balances to transact routine business. The legislature may authorize, in the General Appropriations Act, the temporary delay of the excess balance reduction required under this subsection. This subsection does not apply to revenues or balances in:

- (1) funds outside the treasury;
- (2) trust funds, which for purposes of this section include funds that may or are required to be used in whole or in part for the acquisition, development, construction, or maintenance of state and local government infrastructures, recreational facilities, or natural resource conservation facilities;
- (3) funds created by the constitution or a court; or
- (4) funds for which separate accounting is required by federal law.

(e) This section expires on September 1, 2013 [~~2011~~].

SECTION 16. EFFECT OF ACT. (a) This Act prevails over any other Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment, that purports to create or re-create a special fund or account or to dedicate or rededicate revenue to a particular purpose, including any fund, account, or revenue dedication abolished under former Section 403.094, Government Code.

(b) An exemption from the application of Section 403.095, Government Code, contained in another Act of the 82nd Legislature, Regular Session, 2011, that is exempted from the application of Section 2 of this Act has no effect.

(c) Revenues that, under the terms of another Act of the 82nd Legislature, Regular Session, 2011, would be deposited to the credit of a special account or fund shall be deposited to the credit of the undedicated portion of the general revenue fund unless the fund, account, or dedication is exempted under this Act.

SECTION 17. EFFECTIVE DATE. Except as otherwise provided by this Act:

- (1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

### Floor Amendment No. 1

Amend **CSSB 1588** (house committee printing) in Section 10 of the bill as follows:

- (1) At the end of Subdivision (4) (page 4, line 25), strike "and".
- (2) At the end of Subdivision (5), strike the period and substitute:

;

(6) the low-level radioactive waste disposal compact commission account created as an account in the general revenue fund by **HB 2694** or similar legislation; and

(7) the Alamo complex account created as a separate account in the general revenue fund by **HB 3726**, **SB 1841**, or similar legislation.

### Floor Amendment No. 2

Amend **CSSB 1588** (house committee report) as follows:

(1) In SECTION 10 of the bill, add the following appropriately numbered subdivision to that SECTION and renumber the subsequent subdivisions of that SECTION accordingly:

(\_\_\_\_) the emergency radio infrastructure account created by **HB 442** or similar legislation;

(2) In SECTION 11 of the bill, add the following appropriately numbered subdivision to that SECTION and renumber the subsequent subdivisions of that SECTION accordingly:

(\_\_\_\_) the dedication of the revenue generated under **HB 442**, or similar legislation, for the purpose of creating an interoperable statewide emergency radio infrastructure;

(3) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. TRANSFER OF CERTAIN FUNDS. (a) The comptroller shall hold the revenue that under Section 133.102(e)(11), Local Government Code, would be deposited to the credit of the fugitive apprehension account until the effective date of **HB 442**, Acts of the 82nd Legislature, Regular Session, 2011, or similar legislation creating the emergency radio infrastructure account, and deposit that revenue into the emergency radio infrastructure account on that date.

(b) If **HB 442**, Acts of the 82nd Legislature, Regular Session, 2011, or similar legislation creating the emergency radio infrastructure account is not enacted, this section has no effect.

### Floor Amendment No. 3

Amend **CSSB 1588** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering the remaining ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . FISCAL MATTERS CONCERNING PERMANENT FUNDS FOR  
HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION

SECTION \_\_\_\_ .01. Subchapter B, Chapter 63, Education Code, is amended by adding Section 63.104 to read as follows:

Sec. 63.104. INVESTMENT AND DISTRIBUTION POLICY GOVERNING  
ENDOWMENT OF THE UNIVERSITY OF TEXAS AT EL PASO. The governing  
board of The University of Texas at El Paso shall adopt an investment and distribution  
policy for the institution's endowment fund provided by this subchapter. Section  
63.102 does not apply to the investment, distribution, or expenditure of money from  
the endowment fund.

**Floor Amendment No. 4**

Amend **CSSB 1588** (house committee printing) by adding the following SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . (a) Subchapter C, Chapter 2054, Government Code, is amended by adding Section 2054.064 to read as follows:

Sec. 2054.064. ADVERTISING ON STATE ELECTRONIC INTERNET  
PORTALS. (a) In this section:

(1) "Department" means the Department of Information Resources or a  
successor agency.

(2) "State agency" means any department, board, commission, or other  
agency in the executive branch of state government, including the office of the  
governor. The term does not include an institution of higher education, as defined by  
Section 61.003, Education Code.

(b) In accordance with rules adopted by the department and to the extent  
allowed under federal law:

(1) a state agency shall contract with a private entity to lease advertising  
space on the agency's official electronic Internet portal; and

(2) the department shall contract with a private entity by awarding a 10-year  
license to the entity to lease advertising space on the official electronic Internet portal  
for the State of Texas.

(c) The department shall develop a standard contract for the lease of advertising  
space on an electronic Internet portal under this section. The standard contract  
developed by the department must include terms that:

(1) provide for the payment of a fee by the person leasing the advertising  
space in an amount set by department rule; and

(2) require the advertisements to comply with the rules adopted by the  
department relating to content and composition.

(d) The department shall adopt rules to implement this section. The rules must  
establish:

(1) guidelines relating to the content and composition of advertisements that  
may be placed on an electronic Internet portal;

(2) procedures for procuring advertisements that relate, to the greatest extent  
practicable, to the stated purpose of the state agency;

(3) policies that require:

(A) each advertisement to be clearly labeled on the electronic Internet  
portal as an advertisement; and

(B) a disclaimer on each electronic Internet portal that clearly states that the State of Texas does not endorse the products or services advertised on the state agency electronic Internet portal;

(4) a schedule of fees to be charged for the lease of advertising space under this section; and

(5) the amount of the lease payment that a private entity may retain for administering the lease contract.

(e) A private entity administering a lease under this section shall collect the fees due from the leasing entity. After deduction of the private entity's fees, the remainder of the fees collected under this section shall be forwarded to the comptroller to be allocated as follows:

(1) 50% percent to the credit of the foundation school fund; and

(2) the remainder deposited to the credit of the general revenue fund.

(f) Before entering into a contract under this section, a state agency or the department must evaluate:

(1) the effect of the contract on the bandwidth that the agency or the department requires to perform its official duties; and

(2) whether the contract increases vulnerability to malware or other potential threats to the security of the electronic Internet portal or computer network.

(g) Except as provided by Subsection (h), using the results of the evaluation required under Subsection (f), a state agency or the department shall develop and implement a plan to ensure that state electronic Internet portals and computer networks are secure and that sufficient bandwidth is available to host the advertising required under the contract and to allow for performance of official duties. The plan must include provisions to:

(1) prevent inappropriate content on electronic Internet portals and computer networks associated with this state;

(2) efficiently route data used by the agency or the department to perform its official duties;

(3) manage and reduce the quantity of bandwidth used by the agency or the department; and

(4) ensure the continued security and integrity of electronic Internet portals, computer networks, and confidential and sensitive data associated with this state.

(h) A state agency or the department may accept free or discounted services to assist in performing the evaluation and planning requirements under Subsections (f) and (g) from a provider designated as qualified by the department. The department shall maintain a list of qualified providers on the department's electronic Internet portal.

(i) A state agency or the department is not required to implement a plan developed under Subsection (g) if:

(1) money appropriated to the agency or the department may not be lawfully spent for the purposes of this section; or

(2) the agency or the department determines that the cost of implementing the plan will exceed the income received from a contract under this section.

(b) The dedication of revenue made by this section is exempt from Section 2 of this Act.

**Floor Amendment No. 1 on Third Reading**

Amend **CSSB 1588** (house committee report) on third reading to add SECTION \_\_\_\_ of the bill as follows and renumber the remaining sections accordingly:

SECTION \_\_\_\_\_. CERTAIN OTHER FUNDS HELD OUTSIDE THE TREASURY. Each of the following funds, if created as a fund held outside the treasury by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law, and revenue deposited to the credit of the funds are exempt from this Act:

The Department of Insurance examination local account created in the Texas Treasury Safekeeping Trust Company by **SB 1291** or similar legislation.

**Floor Amendment No. 2 on Third Reading**

Amend **CSSB 1588** on third reading as follows:

(1) In the SECTION of the bill adding Section 2054.064, Government Code, at the end of added Subsection (e)(1), strike "and".

(2) In the SECTION of the bill adding Section 2054.064, Government Code, strike added Subsection (e)(2), and substitute the following:

(2) \_\_\_\_\_ percent to the credit of the optometry career program account in the general revenue fund to be used by the University of Houston for the purpose of establishing a summer optometry career program; and

(3) the remainder deposited to the credit of the general revenue fund.

(3) Add the following appropriately numbered SECTION to the bill and renumber the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 111, Education Code, is amended by adding Section 111.43 to read as follows:

Sec. 111.43. OPTIONAL SUMMER OPTOMETRY CAREER PROGRAM.

(a) The university may operate a summer program that prepares highly qualified, economically disadvantaged junior-level, senior-level, and postbaccalaureate students from any public or private institution of higher education for advanced studies and a career in the field of optometry.

The amendments were read.

Senator Ogden moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1588** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Estes, Hinojosa, Lucio, and Seliger.

**SENATE BILL 810 WITH HOUSE AMENDMENT**

Senator Hinojosa called **SB 810** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 810** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the boundaries of the Ingleside Cove Wildlife Sanctuary.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 82.501, Parks and Wildlife Code, is amended to read as follows:

Sec. 82.501. CREATION. The Ingleside Cove Wildlife Sanctuary is composed of an area in San Patricio and Nueces counties described as follows:

BEGINNING at Kinney Bayou on the east shoreline of Ingleside Cove, also known as North Shore Channel (N 27 50.791, W 97 13.577);

THENCE, in a northwesterly direction along the shoreline to the channel marker at the location commonly known as Donnel Point (N 27 51.593, W 97 14.505);

THENCE, due northwest crossing the Reynolds Channel to the east side of a spoil bank (N 27 51.668, W 97 14.715);

THENCE, following the eastern edge of this spoil bank in a southeasterly direction to its southernmost point (N 27 50.328, W 97 14.302), continuing southeast crossing Ingleside Cut to the north shore of Ingleside Point (N 27 50.231, W 97 14.197);

THENCE, in an easterly and southeasterly direction along the east shoreline following the Reynolds Channel through Ingleside Point to the southernmost portion of this cut (N 27 49.782, W 97 13.782);

THENCE, due east across the Reynolds Channel to the west shoreline of the mainland known as the southernmost portion of Ingleside Cove (N 27 49.834, W 97 13.641);

THENCE, following the shoreline in a northerly direction being the east shoreline of Ingleside Cove to the point of beginning.

~~[BEGINNING at Kinney Bayou on the east shoreline of Ingleside Cove, also known as North Shore Channel;~~

~~[THENCE, in a northwesterly direction along the shoreline to channel marker number "22" with a flashing red light every 4 seconds known as Donnel Point;~~

~~[THENCE, due west crossing the Reynolds Channel to the east side of a spoil bank;~~

~~[THENCE, following the eastern edge of this spoil bank in a southeasterly direction to its southernmost point, continuing southeast crossing Ingleside cut to the north shore of Ingleside Point;~~

~~[THENCE, in an easterly and southeasterly direction along the east shoreline following the Reynolds Channel through Ingleside Point to the southern most portion of this cut;~~

~~[THENCE, due east across the Reynolds Channel to the west shoreline of the mainland known as the southern most portion of Ingleside Cove;~~

~~[THENCE, following the shoreline in a northerly direction being the east shoreline of Ingleside Cove to the point of beginning.]~~

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 810**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 20 WITH HOUSE AMENDMENTS**

Senator Jackson, on behalf of Senator Williams, called **SB 20** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 20** (house committee report) as follows:

(1) In SECTION 1 of the bill, in added Section 386.252(a)(1)(E), Health and Safety Code (page 1, line 24), strike "and".

(2) In SECTION 1 of the bill, in added Section 386.252(a)(1)(F), Health and Safety Code (page 2, line 3), strike "393.010;" and substitute the following:  
393.010; and

(G) two percent may be used for the Texas alternative fueling facilities program;

(3) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 386.252, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may allocate unexpended money designated for the Texas alternative fueling facilities program to other programs described under Subsection (a) after the commission allocates money to recipients under the alternative fueling facilities program.

SECTION \_\_\_\_\_. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 394 to read as follows:

#### CHAPTER 394. ALTERNATIVE FUELING FACILITIES PROGRAM

Sec. 394.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Program" means the Texas alternative fueling facilities program established under this chapter.

Sec. 394.002. PROGRAM. (a) The commission shall establish and administer the Texas alternative fueling facilities program to provide fueling facilities for alternative fuel in nonattainment areas. Under the program, the commission shall provide a grant for each eligible facility to offset the cost of those facilities.

(b) An entity that constructs, reconstructs, or acquires an alternative fueling facility is eligible to participate in the program.

Sec. 394.003. APPLICATION FOR GRANT. (a) An entity operating in this state that constructs, reconstructs, or acquires a facility to store, compress, or dispense alternative fuels may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

Sec. 394.004. ELIGIBILITY OF FACILITIES FOR GRANTS. (a) The commission by rule shall establish criteria for prioritizing facilities eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate.

(b) To be eligible for a grant under the program, the entity receiving the grant must agree to make the alternative fueling facility available to persons not associated with the entity at times designated by the grant agreement.

(c) A recipient of a grant under this chapter is not eligible to receive a second grant under this chapter for the same facility.

Sec. 394.005. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant only to pay the costs of the facility for which the grant is made. The recipient may not use the grant to pay the recipient's administrative expenses.

Sec. 394.006. AMOUNT OF GRANT. For each eligible facility for which a recipient is awarded a grant under the program, the commission shall award the grant in an amount equal to the lesser of:

(1) 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by the commission to construct, reconstruct, or acquire the facility; or

(2) \$500,000.

Sec. 394.007. EXPIRATION. This chapter expires August 31, 2018.



SECTION \_\_\_\_\_. The Texas Commission on Environmental Quality shall adopt rules under Section 394.004, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

## Floor Amendment No. 2

Amend **SB 20** (house committee report) as follows:

(1) In SECTION 2 of the bill, strike added Section 393.001(5), Health and Safety Code (page 3, lines 20 and 21), and substitute the following:

(5) "Incremental cost" means the difference between the manufacturer's suggested retail price of a baseline vehicle, the documented dealer price of a baseline vehicle, cost to lease or otherwise commercially finance a baseline vehicle, cost to repower with a baseline engine, or other appropriate baseline cost established by the commission, and the actual cost of the natural gas vehicle purchase, lease, or other commercial financing, or repower.

(2) In SECTION 2 of the bill, between added Sections 393.001(5) and (6), Health and Safety Code (page 3, between lines 21 and 22), insert the following new subdivision, numbered appropriately, and renumber subsequent subdivisions of added Section 393.001, Health and Safety Code, accordingly:

( ) "Medium-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of more than 8,500 pounds that:

(A) is certified to the United States Environmental Protection Agency's light-duty emissions standard; or

(B) has an engine certified to the United States Environmental Protection Agency's light-duty emissions standard.

(3) In SECTION 2 of the bill, in added Section 393.002, Health and Safety Code (page 4, line 4), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(4) In SECTION 2 of the bill, in added Section 393.002, Health and Safety Code (page 4, line 7), between "heavy-duty" and "motor vehicles", insert "motor vehicles and medium-duty".

(5) In SECTION 2 of the bill, in added Section 393.002, Health and Safety Code (page 4, line 8), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(6) In SECTION 2 of the bill, in added Section 393.003(a)(1), Health and Safety Code (page 4, line 14), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(7) In SECTION 2 of the bill, in added Section 393.003(a)(1)(C), Health and Safety Code (page 4, line 19), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(8) In SECTION 2 of the bill, strike added Sections 393.003(a)(1)(D) and (a)(2), Health and Safety Code (page 4, line 21, through page 5, line 1), and substitute the following:

(D) is powered by an engine certified to:

(i) emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle; or

(2) repowered the on-road motor vehicle to a natural gas vehicle powered by a natural gas engine that:

(A) is certified to current federal emissions standards; and

(B) is:

(i) a heavy-duty engine that is certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) certified to meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle.

(9) In SECTION 2 of the bill, in added Section 393.003(b), Health and Safety Code (page 5, line 2), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(10) In SECTION 2 of the bill, in added Section 393.003(b)(1), Health and Safety Code (page 5, line 5), strike "or by another entity".

(11) In SECTION 2 of the bill, in added Section 393.004(a), Health and Safety Code (page 5, line 10), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(12) In SECTION 2 of the bill, in added Section 393.005(b)(1), Health and Safety Code (page 5, line 27), strike "heavy-duty".

(13) In SECTION 2 of the bill, in added Section 393.005(b)(2)(A), Health and Safety Code (page 6, line 7), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(14) In SECTION 2 of the bill, in added Section 393.005(b)(2)(B), Health and Safety Code (page 6, line 19), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(15) In SECTION 2 of the bill, in added Section 393.005(f), Health and Safety Code (page 8, line 4), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(16) In SECTION 2 of the bill, in added Section 393.005(g), Health and Safety Code (page 8, line 13), between "heavy-duty" and "motor vehicles", insert "motor vehicles and medium-duty".

(17) In SECTION 2 of the bill, strike added Section 393.007(a)(2), Health and Safety Code (page 9, lines 14 through 20), and substitute the following:

(2) is based on:

(A) the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle; and

(B) the usage of the natural gas vehicle; and

(3) may take into account the overall emissions reduction achieved by the natural gas vehicle.

(18) In SECTION 2 of the bill, after added Section 393.007(b), Health and Safety Code (page 10, between lines 1 and 2), insert the following:

(c) A person may not receive a grant under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded. A person shall return to the commission the amount of a grant awarded under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded.

(d) The commission shall reduce the amount of a grant awarded under this chapter as necessary to keep the combined incentive total at or below the incremental cost of the vehicle for which the grant is awarded if the grant recipient is eligible to receive an automatic incentive at or before the time a grant is awarded under this chapter.

(19) In SECTION 2 of the bill, strike added Section 393.008(b)(1), Health and Safety Code (page 10, lines 10 through 13), and substitute the following:

(1) provide for the commission to compile and regularly update a listing of preapproved natural gas vehicles:

(A) powered by natural gas engines certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(B) certified to the United States Environmental Protection Agency's light-duty Bin 5 standard or better;

(20) In SECTION 2 of the bill, in added Section 393.009(a)(1), Health and Safety Code (page 11, line 20), between "on-road heavy-duty" and "natural gas", insert "or medium-duty".

(21) In SECTION 2 of the bill, in added Section 393.009(a)(1), Health and Safety Code (page 11, line 20), between "or heavy-duty" and "natural gas", insert "or medium-duty".

(22) In SECTION 2 of the bill, in added Section 393.009(e)(2), Health and Safety Code (page 12, line 14), between "heavy-duty" and "natural gas", insert "or medium-duty".

(23) In SECTION 2 of the bill, in added Section 393.009(e)(2), Health and Safety Code (page 12, line 15), before "natural gas engines.", insert "heavy-duty or medium-duty".

(24) In SECTION 2 of the bill, strike added Section 393.010(b), Health and Safety Code (page 13, lines 12 and 13), and substitute the following:

(b) The commission may not award more than:

(1) three station grants to any entity; or

(2) one grant for each station.

(25) In SECTION 2 of the bill, between added Sections 393.010(b) and (c), Health and Safety Code (page 13, between lines 13 and 14), insert the following new subsection, designated appropriately, and redesignate subsequent subsections of added Section 393.010, Health and Safety Code, accordingly:

(\_\_\_\_) Grants awarded under this section may not exceed:

(1) \$100,000 for a compressed natural gas station;

(2) \$250,000 for a liquefied natural gas station; or

(3) \$400,000 for a station providing both liquefied and compressed natural gas.

(26) In SECTION 2 of the bill, strike added Section 393.011, Health and Safety Code (page 14, lines 6-10) and renumber subsequent Sections of the SECTION accordingly.

(27) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 386.252, Health and Safety Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notwithstanding Subsection (a), the commission may reallocate money in the fund if:

(1) the commission, in consultation with the governor and the advisory board, determines that the use of the money in the fund for the program established under Chapter 393 will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and

(2) the commission finds that the reallocation of some or all of the funding for the program established under Chapter 393 would resolve the noncompliance.

(f) Under Subsection (e), the commission may not reallocate more than the minimum amount of money necessary to resolve the noncompliance.

The amendments were read.

Senator Jackson, on behalf of Senator Williams, moved to concur in the House amendments to **SB 20**.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Patrick.

#### **SENATE BILL 1686 WITH HOUSE AMENDMENT**

Senator Ellis called **SB 1686** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 1686** (house committee printing), in SECTION 6 of the bill, on page 3, line 8, by striking "2012" and substituting "2011".

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 1686**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 1714 WITH HOUSE AMENDMENTS**

Senator Jackson, on behalf of Senator Duncan, called **SB 1714** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 1714** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 406.033(a) and (d), Labor Code, are amended to read as follows:

(a) In an action against an employer by or on behalf of an employee who is not covered by ~~[who does not have]~~ workers' compensation insurance obtained in the manner authorized by Section 406.003 ~~[coverage]~~ to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

- (1) the employee was guilty of contributory negligence;
- (2) the employee assumed the risk of injury or death; or
- (3) the injury or death was caused by the negligence of a fellow employee.

(d) In an action described by Subsection (a) ~~[against an employer who does not have workers' compensation insurance coverage]~~, the plaintiff must prove negligence of the employer or of an agent or servant of the employer acting within the general scope of the agent's or servant's employment.

SECTION 2. Section 406.034(d), Labor Code, is amended to read as follows:

(d) An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 406.033, the cause of action is subject to all defenses available under common law and the statutes of this state unless the employee has waived coverage under an agreement with the employer.

SECTION 3. (a) Sections 406.033 and 406.034, Labor Code, as amended by this Act, do not apply to a cause of action by an employee if:

- (1) the employee is subject to a valid and enforceable contract with the employee's employer relating to benefits for occupational injury or death; and
- (2) the employer, since January 1, 2011, has continuously:
  - (A) had workers' compensation insurance coverage; and
  - (B) offered its employees a program providing benefits for occupational injury or death that is not governed by Subtitle A, Title 5, Labor Code.

(b) Except as provided by Subsection (a) of this section, Sections 406.033 and 406.034, Labor Code, as amended by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before that date is governed by the law in effect on the date the action is filed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2011.

**Floor Amendment No. 1**

Amend **CSSB 1714** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in amended Section 406.034(d), Labor Code (page 2, line 8), strike "under" and substitute "in connection with".

(2) In SECTION 3 of the bill, in Subsection (b) of that section (page 2, lines 25 and 26), strike "accrues" each time that word appears and substitute "is filed".

The amendments were read.

Senator Jackson, on behalf of Senator Duncan, moved to concur in the House amendments to **SB 1714**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 167 WITH HOUSE AMENDMENT**

Senator West called **SB 167** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

SECTION \_\_\_\_\_. Amend **SB 167** (engrossed) to read as follows:

Page 2, line 23 and 24, after "convicted and subsequently" strike "~~pardoned or otherwise subsequently granted relief~~" and insert "granted relief or pardoned".

The amendment was read.

Senator West moved to concur in the House amendment to **SB 167**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE ON HOUSE BILL 1335**

Senator Van de Putte called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1335** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1335** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Van de Putte, Chair; Carona, Lucio, Shapiro, and Zaffirini.

**SENATE BILL 761 WITH HOUSE AMENDMENT**

Senator West called **SB 761** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 761** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the employment of physicians by certain hospitals associated with nonprofit fraternal organizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 311, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS  
ASSOCIATED WITH NONPROFIT FRATERNAL ORGANIZATIONS

Sec. 311.061. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a hospital that employs or seeks to employ a physician, that primarily provides medical care to children younger than 18 years of age, and that:

- (1) is owned or operated by a nonprofit fraternal organization; or
- (2) has a governing body the majority of members of which belong to a nonprofit fraternal organization.

Sec. 311.062. EMPLOYMENT OF PHYSICIANS PERMITTED. (a) A hospital may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital if the hospital satisfies the requirements of this subchapter.

(b) The billing and receipt of third-party reimbursement for medical care at a hospital does not affect the authority granted to the hospital under this section.

Sec. 311.063. DUTIES AND HOSPITAL POLICIES. (a) A hospital that employs physicians under this subchapter shall:

(1) appoint a chief medical officer, who may be a member of the hospital's medical staff;

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital; and

(3) designate the chief medical officer as the contact for the Texas Medical Board for all matters relating to complaints regarding interference or attempted interference with a physician's independent medical judgment or any other matter under this section.

(b) The person appointed as chief medical officer shall report the person's appointment to the Texas Medical Board.

(c) The policies adopted under this section must include:

(1) policies relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review; and

(E) medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(d) The policies adopted under this section must be approved by the chief medical officer.

(e) In the event of a conflict between a policy approved by the chief medical officer and any other policy of the hospital, a conflict management process shall be jointly developed and implemented to resolve the conflict.

(f) For all matters relating to the practice of medicine, each physician employed by a hospital under this subchapter shall ultimately report to the chief medical officer.

(g) The chief medical officer shall immediately report to the Texas Medical Board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

Sec. 311.064. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed as authorizing the governing body of a hospital to supervise or control the practice of medicine as prohibited under Subtitle B, Title 3, Occupations Code.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 761**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 694 WITH HOUSE AMENDMENTS**

Senator West called **SB 694** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Amendment**

Amend **SB 694** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED**

#### **AN ACT**

relating to the regulation of metal recycling entities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1956.001, Occupations Code, is amended by amending Subdivisions (1), (4), and (10) and adding Subdivision (1-a) to read as follows:

(1) "Air conditioning and refrigeration contracting company" has the meaning assigned by Section 1302.002.

(1-a) "Aluminum material" means a product made from aluminum, an aluminum alloy, or an aluminum by-product. The term includes aluminum wiring and an aluminum beer keg but does not include another type of aluminum can used to contain a food or beverage.

(4) "Copper or brass material" means:

(A) insulated or noninsulated copper wire or cable of the type used by a public utility or common carrier that contains copper or an alloy of copper or zinc; or



(B) a copper or brass item of a type commonly used in construction or by a public utility~~[-or~~  
~~[(C) copper pipe or copper tubing]~~.

(10) "Regulated metal" means:

- (A) manhole covers;
- (B) guardrails;
- (C) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;
- (D) beer kegs made from metal other than aluminum;
- (E) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;
- (F) unused rebar;
- (G) street signs;
- (H) drain gates;
- (I) safes;
- (J) communication, transmission, and service wire or cable;
- (K) condensing or evaporator coils for central heating or air conditioning units;
- (L) utility structures, including the fixtures and hardware;
- (M) aluminum or stainless steel containers designed to hold propane for fueling forklifts; ~~[and]~~
- (N) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions;
- (O) catalytic converters not attached to a vehicle;
- (P) fire hydrants;
- (Q) metal bleachers or other seating facilities used in recreational areas or sporting arenas;
- (R) any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad;
- (S) insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation;
- (T) backflow valves;
- (U) metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals;
- (V) copper pipe or tubing; and
- (W) any metal item readily identifiable as being used in an aircraft engine.

SECTION 2. The heading to Section 1956.003, Occupations Code, is amended to read as follows:

Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

SECTION 3. Section 1956.003, Occupations Code, is amended by adding Subsections (a-1), (a-2), (f), and (g) to read as follows:

(a-1) A county, municipality, or other political subdivision may require the record of purchase described under Section 1956.033 to contain a clear and legible thumbprint of a seller of regulated material.

(a-2) A county, municipality, or other political subdivision that, as authorized under Subsection (a), requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material shall include in any contract entered into by the county, municipality, or political subdivision relating to the reporting of the information a provision that:

(1) requires any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information relating to a sale of regulated material to maintain the confidentiality of the information received; and

(2) allows the county, municipality, or political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Subdivision (1).

(f) A person commits an offense if the person operates a metal recycling entity and does not hold a valid license or permit required by a county, municipality, or other political subdivision as authorized under Subsection (b). An offense under this subsection is a Class B misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under this subsection, in which event the offense is a Class A misdemeanor.

(g) A county, municipality, or other political subdivision shall provide a written notice to a metal recycling entity issued a citation for an offense described by Subsection (f). The notice must state that the metal recycling entity must cease operation until the person holds the appropriate license or permit issued by a county, municipality, or other political subdivision as authorized under Subsection (b).

SECTION 4. Section 1956.015, Occupations Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Information provided under this section is not subject to disclosure under Chapter 552, Government Code. The department shall maintain the confidentiality of information provided under this section [that relates to the financial condition or business affairs of a metal recycling entity or that is otherwise commercially sensitive. The confidential information is not subject to disclosure under Chapter 552, Government Code].

(e) The department may enter into contracts relating to the operation of the statewide electronic reporting system established by this section. A contract under this subsection must:

(1) require that any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information provided under this section maintain the confidentiality of the information provided under this section; and

(2) provide that the department may terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Subdivision (1).

SECTION 5. Subchapter A-1, Chapter 1956, Occupations Code, is amended by adding Section 1956.016 to read as follows:

Sec. 1956.016. REGISTRATION DATABASE. The department shall make available on its Internet website a publicly accessible list of all registered metal recycling entities.

SECTION 6. Section 1956.032, Occupations Code, is amended to read as follows:

Sec. 1956.032. INFORMATION PROVIDED BY SELLER. (a) Except as provided by Subsection (f), a person attempting to sell regulated material to a metal recycling entity shall:

(1) display to the metal recycling entity the person's personal identification document;

(2) provide to the metal recycling entity:

(A) the make, model, color, and license plate number, and the state of issuance, of the motor vehicle used to transport the regulated material; and

(B) a description and any license plate number of any trailer used to transport the regulated material; ~~and~~

(3) if the regulated material includes condensing or evaporator coils, tubing, or pipes for central heating or air conditioning units, display to the metal recycling entity:

(A) the person's air conditioning and refrigeration contractor license issued under Subchapter F or G, Chapter 1302;

(B) the person's air conditioning and refrigeration technician registration issued under Subchapter K, Chapter 1302;

(C) a receipt, bill of sale, or other documentation showing that the seller purchased the heating or air conditioning unit components the seller is attempting to sell; or

(D) a receipt, bill of sale, or other documentation showing that the seller has purchased a replacement heating or air conditioning unit;

(4) if the regulated material includes insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation, display to the metal recycling entity documentation from the fire department of a county, municipality, or other political subdivision stating that the material was salvaged from a fire in that county, municipality, or political subdivision; and

(5) either:

(A) present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or

(B) sign a written statement provided by the metal recycling entity that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale.

(b) A person required by a municipality to prepare a signed statement consisting of the information required by Subsection (a)(5) ~~[(a)(3)]~~ may use the statement required by the municipality to comply with Subsection (a)(5) ~~[(a)(3)]~~.

(c) The metal recycling entity ~~[or the entity's agent]~~ shall visually verify the accuracy of the personal identification document presented by the seller at the time of the purchase of regulated material and make a copy of the document ~~[identification]~~ to be maintained by the entity in the entity's records, except as otherwise provided by Subsection (f).

(d) Unless exempt as provided by Section 1956.0335, the [The] metal recycling entity shall obtain a digital or video [or the entity's agent for recordkeeping purposes may] photograph that accurately depicts the seller's entire face, not including any hat, and obtain the name of the seller's employer.

(e) Unless exempt as provided by Section 1956.0335, the [The] metal recycling entity shall obtain a digital or video [or the entity's agent for recordkeeping purposes may take a] photograph that accurately depicts:

(1) [of] the motor vehicle of the seller in which the make, model, color, and license plate number of the motor vehicle are identifiable; and

(2) the model and any license plate number of any trailer attached to the seller's motor vehicle [in lieu of the information required under Subsection (a)(3)].

(f) The metal recycling entity is not required to make a copy of the identification as required under Subsection (c) or collect the information required under Subsection (a)(5) [(a)(3)] if:

(1) the seller signs the written statement as required under Subsection (a)(5) [(a)(3)];

(2) the seller has previously provided the information required under Subsections [Subsection] (a) and (c); and

(3) the previously provided information has not changed.

(g) Notwithstanding Section 1956.002, a person attempting to sell regulated material who represents that the person is a metal recycling entity shall provide a copy of the certificate of registration issued under Section 1956.022 in addition to the information required under Subsection (a).

SECTION 7. Section 1956.033, Occupations Code, is amended to read as follows:

Sec. 1956.033. RECORD OF PURCHASE. (a) Each metal recycling entity in this state shall keep an accurate electronic record or an accurate and legible written record of each purchase of regulated material made in the course of the entity's business from an individual ~~[of:~~

~~[(1) copper or brass material;~~

~~[(2) bronze material;~~

~~[(3) aluminum material; or~~

~~[(4) regulated metal].~~

(b) The record must be in English and include:

(1) the name and address of the metal recycling entity;

(2) the [place and] date of the purchase;

(3) [(2)] the name, [and] address, and [of each individual from whom the regulated material is purchased or obtained;

[(3) the] identifying number displayed on [of] the seller's personal identification document and a copy of the seller's personal identification document as required under Section 1956.032;

(4) as applicable:

(A) the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(3)(A);

(B) a copy of the seller's air conditioning and refrigeration technician registration displayed under Section 1956.032(a)(3)(B);

(C) a copy of the documentation described by Section 1956.032(a)(3)(C);

(D) a copy of the documentation described by Section 1956.032(a)(3)(D); or

(E) a copy of the documentation described by Section 1956.032(a)(4);

(5) a digital or video photograph that accurately depicts each item of regulated material purchased unless the metal recycling entity is exempt as provided by Section 1956.0335;

(6) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased;

(7) copies of the photographs described by Sections 1956.032(d) and (e) unless the metal recycling entity is exempt as provided by Section 1956.0335;

(8) a copy of the seller's thumbprint if required by a county, municipality, or other political subdivision as provided by Section 1956.003(a-1); and

(9) [~~(5)~~] the information required by Section 1956.032(a)(5) [~~1956.032(a)(3)~~].

SECTION 8. Subchapter A-3, Chapter 1956, Occupations Code, is amended by adding Section 1956.0335 to read as follows:

Sec. 1956.0335. EXEMPTION FROM PHOTOGRAPH REQUIREMENT. A metal recycling entity is exempt from the requirements of Sections 1956.032(d) and (e) and 1956.033(b)(5) and (7) if:

(1) the entity annually submits to the department:

(A) an application requesting an exception to the requirements; and

(B) an affidavit stating that the entity does not have an available means of obtaining a digital or video photograph; and

(2) the department approves the entity's application under this section.

SECTION 9. Section 1956.034, Occupations Code, is amended to read as follows:

Sec. 1956.034. PRESERVATION OF RECORDS; UNAUTHORIZED USE OF INFORMATION. (a) A metal recycling entity shall preserve each record required by Sections 1956.032 and 1956.033 until the third anniversary of the date the record was made.

(b) The records may be maintained in an electronic medium or through other recordkeeping technology. If a record is not maintained in a hard copy format, the metal recycling entity must provide a legible hard copy of the record on request of a peace officer under Section 1956.035.

(c) The records must be kept in the office or place of business where the purchase was made until the first anniversary of the date of purchase.

(d) Except as authorized by this chapter, a person commits an offense if the person knowingly releases or discloses information regarding a seller of regulated material that is contained in a record required by Section 1956.032 or 1956.033.

(e) An offense under Subsection (d) is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under Subsection (d), in which event the offense is a state jail felony.

SECTION 10. Section 1956.036, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsections ~~[Subsection]~~ (b) and (d), not later than 48 hours ~~[the seventh day]~~ after the ~~[date of the]~~ purchase or other acquisition of material for which a record is required under Section 1956.033, a metal recycling entity shall send an electronic transaction report to the department via the department's Internet website. The ~~[by facsimile or electronic mail to or file with the department a]~~ report must contain ~~[containing]~~ the information required to be recorded under Section 1956.033, other than the photographs described by Sections 1956.033(b)(5) and (7) ~~[that section]~~.

(b) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall:

(1) not later than the close of business on the entity's first working day after the purchase date:

(A) by telephone[;] notify the department of the purchase; or

(B) submit to the department electronically via the department's Internet website or file with the department a report containing the information required to be recorded under Section 1956.033, other than the photographs described by Sections 1956.033(b)(5) and (7); and

(2) if not already submitted or filed under Subdivision (1)(B), not later than 48 hours ~~[the fifth day]~~ after the purchase ~~[date]~~, submit to the department electronically via the department's Internet website ~~[mail to]~~ or file with the department a report containing the information required to be recorded under Section 1956.033, other than the photographs described by Sections 1956.033(b)(5) and (7).

(d) A metal recycling entity may submit the transaction report required under Subsection (a) by facsimile if:

(1) the entity annually submits to the department:

(A) an application requesting an exception to the electronic reporting requirement; and

(B) an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically; and

(2) the department approves the entity's application under this subsection.

SECTION 11. Section 1956.037(a), Occupations Code, is amended to read as follows:

(a) A metal recycling entity may not dispose of, process, sell, or remove from the premises an item of regulated metal unless:

(1) the entity acquired the item more than:

(A) 30 days, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material; or

(B) five days ~~[72 hours]~~, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is not an item described by Paragraph (A); or

(2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business.

SECTION 12. Section 1956.038, Occupations Code, is amended to read as follows:

Sec. 1956.038. PROHIBITED ACTS. (a) A person may not, with the intent to deceive:

(1) display to a metal recycling entity a false or invalid personal identification document in connection with the person's attempted sale of regulated material;

(2) make a false, material statement or representation to a metal recycling entity in connection with:

(A) that person's execution of a written statement required by Section 1956.032(a)(5) [~~1956.032(a)(3)~~]; or

(B) the entity's efforts to obtain the information required under Section 1956.033(b); [~~or~~]

(3) display or provide to a metal recycling entity any information required under Section 1956.032 that the person knows is false or invalid; or

(4) display another individual's personal identification document in connection with the sale of regulated material.

(b) A metal recycling entity may pay for a purchase of regulated metal only as follows:

(1) by check issued to the seller not earlier than the fifth day after the date of the purchase; or

(2) by cash not earlier than the 10th day after the date of the purchase.

(c) A metal recycling entity may not pay cash for a purchase of regulated material unless the metal recycling entity is registered under Subchapter A-2.

(d) Notwithstanding Section 1956.003(a) or any other law, a county, municipality, or other political subdivision may not adopt a rule, charter, or ordinance or issue an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsections (b) and (c).

(e) A metal recycling entity that purchases regulated material with cash in violation of Subsection (c) may not pay cash for a purchase of regulated material before the second anniversary of the date the entity registers under Subchapter A-2.

SECTION 13. Section 1956.040, Occupations Code, is amended by adding Subsections (a-1), (a-2), (a-3), and (b-1) and amending Subsection (b) to read as follows:

(a-1) A person commits an offense if the person knowingly violates Section 1956.021, 1956.023(d), 1956.036(a), or 1956.039. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$10,000, unless it is shown on trial of the offense that the person has previously been convicted of a violation of this subsection, in which event the offense is a state jail felony.

(a-2) It is an affirmative defense to prosecution of a violation of Section 1956.021 or 1956.023(d) that the person made a diligent effort to obtain or renew a certificate of registration at the time of the violation.

(a-3) A municipality or county may retain 10 percent of the money collected from a fine for a conviction of an offense under Subsection (a-1) as a service fee for that collection and the clerk of the court shall remit the remainder of the fine collected for conviction of an offense under Subsection (a-1) to the comptroller in the manner

provided for the remission of fees to the comptroller under Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit proceeds received under this subsection to the credit of an account in the general revenue fund, and those proceeds may be appropriated only to the department and used to:

(1) finance the department's administration of Subchapters A, A-1, A-2, and A-3; and

(2) fund grants distributed under the prevention of scrap metal theft grant program established under Subchapter N, Chapter 411, Government Code.

(b) A person commits an offense if the person knowingly buys:

(1) stolen regulated material;

(2) insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation, unless the wire is accompanied by documentation from the fire department of a county, municipality, or other political subdivision stating that the material was salvaged from a fire in that county, municipality, or political subdivision; or

(3) condensing or evaporator coils, tubing, rods, or other components of a central air conditioning unit that have been altered to resemble components of a portable or self-contained ductless air conditioning product that has a cooling capacity of three tons or less.

(b-1) An offense under Subsection (b) [~~this subsection~~] is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under Subsection (b) [~~this subsection~~], in which event the offense is a state jail felony.

SECTION 14. Section 1956.103(a), Occupations Code, is amended to read as follows:

(a) A person may not sell or otherwise transfer to a metal recycling entity:

(1) a lead-acid battery, fuel tank, or PCB-containing capacitor that is included with another type of scrap, used, or obsolete metal without first obtaining from the metal recycling entity a written and signed acknowledgment that the scrap, used, or obsolete metal includes one or more lead-acid batteries, fuel tanks, or PCB-containing capacitors;

(2) any of the following items that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:

(A) a motor vehicle;

(B) a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle;

(C) an appliance; or

(D) any other item of scrap, used, or obsolete metal; ~~or~~

(3) a motor vehicle or a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle if the motor vehicle includes, contains, or encloses a tire or scrap tire; or

(4) a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.



SECTION 15. Section 1956.151, Occupations Code, is amended to read as follows:

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

- (1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;
  - (2) sells, barter, or offers to sell or barter a certificate of registration;
  - (3) violates a provision of this chapter or a rule adopted under this chapter;
- or

- (4) violates Section 1956.021.

SECTION 16. Section 1956.202(d), Occupations Code, is amended to read as follows:

(d) A civil penalty may not be assessed under this section for conduct described by Section 1956.021, 1956.023(d), 1956.036(a), 1956.038, or 1956.039.

SECTION 17. Chapter 411, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. PREVENTION OF SCRAP METAL THEFT GRANT PROGRAM

Sec. 411.421. DEFINITION. In this subchapter, "regulated material" has the meaning assigned by Section 1956.001, Occupations Code.

Sec. 411.422. GRANTS TO FUND SCRAP METAL THEFT PREVENTION.  
(a) From fines collected and distributed to the department under Sections 1956.040(a-1) and (a-3), Occupations Code, the commission by rule shall establish and implement a grant program to provide funding to assist local law enforcement agencies in preventing the theft of regulated material.

(b) To be eligible for a grant, a recipient must be a local law enforcement agency that has established a program designed to prevent the theft of regulated material.

(c) Rules adopted under this section must:

(1) include accountability measures for grant recipients and provisions for loss of eligibility for grant recipients that fail to comply with the measures; and

(2) require grant recipients to provide to the department information on program outcomes.

SECTION 18. Section 31.03(e), Penal Code, is amended to read as follows:

(e) Except as provided by Subsection (f), an offense under this section is:

- (1) a Class C misdemeanor if the value of the property stolen is less than:

(A) \$50; or

(B) \$20 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

- (2) a Class B misdemeanor if:

(A) the value of the property stolen is:

(i) \$50 or more but less than \$500; or

(ii) \$20 or more but less than \$500 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

- (B) the value of the property stolen is less than:
  - (i) \$50 and the defendant has previously been convicted of any grade of theft; or
  - (ii) \$20, the defendant has previously been convicted of any grade of theft, and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06; or
- (C) the property stolen is a driver's license, commercial driver's license, or personal identification certificate issued by this state or another state;
- (3) a Class A misdemeanor if the value of the property stolen is \$500 or more but less than \$1,500;
- (4) a state jail felony if:
  - (A) the value of the property stolen is \$1,500 or more but less than \$20,000, or the property is less than 10 head of sheep, swine, or goats or any part thereof under the value of \$20,000;
  - (B) regardless of value, the property is stolen from the person of another or from a human corpse or grave, including property that is a military grave marker;
  - (C) the property stolen is a firearm, as defined by Section 46.01;
  - (D) the value of the property stolen is less than \$1,500 and the defendant has been previously convicted two or more times of any grade of theft;
  - (E) the property stolen is an official ballot or official carrier envelope for an election; or
  - (F) the value of the property stolen is less than \$20,000 and the property stolen is ~~[insulated or noninsulated tubing, rods, water gate stems, wire, or cable that consists of at least 50 percent]~~:
    - (i) aluminum;
    - (ii) bronze; ~~[or]~~
    - (iii) copper; or
    - (iv) brass;
- (5) a felony of the third degree if the value of the property stolen is \$20,000 or more but less than \$100,000, or the property is:
  - (A) cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than \$100,000; or
  - (B) 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than \$100,000;
- (6) a felony of the second degree if the value of the property stolen is \$100,000 or more but less than \$200,000; or
- (7) a felony of the first degree if the value of the property stolen is \$200,000 or more.

SECTION 19. Sections 1956.015(b) and (c), Occupations Code, are repealed.

SECTION 20. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was

committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) The enhancement of the punishment of an offense provided under Section 1956.003(f) or 1956.040(a-1), Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2012. An offense committed before January 1, 2012, is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before January 1, 2012, if any element of the offense occurred before that date.

SECTION 21. This Act takes effect September 1, 2011.

### **Floor Amendment No. 1**

Amend **CSSB 694** (house committee report) as follows:

(1) In SECTION 9 of the bill, in added Section 1956.034(b), Occupations Code (page 11, lines 18 and 19), strike "request of a peace officer" and substitute "receipt of a request".

(2) Add the following appropriately numbered SECTION to the bill and renumber the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 1956.035, Occupations Code, is amended to read as follows:

Sec. 1956.035. INSPECTION OF RECORDS [~~BY PEACE OFFICER~~]. (a) On request, a metal recycling entity shall permit a peace officer of this state, a representative of the department, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to inspect, during the entity's usual business hours:

- (1) a record required by Section 1956.033; or
- (2) regulated material in the entity's possession.

(b) The person seeking to inspect a record or material [~~inspecting officer~~] shall:

- (1) inform the entity of the officer's status as a peace officer; or
- (2) if the person is a representative of the department or a representative of a county, municipality, or other political subdivision, inform the entity of the person's status and display to the entity an identification document or other appropriate documentation establishing the person's status as a representative of the department or of the appropriate county, municipality, or political subdivision.

### **Floor Amendment No. 2 on Third Reading**

Amend **CSSB 694** on third reading in SECTION 3 of the bill by adding subsection (h) to read as follows:

(h) Notwithstanding any other law, a governmental entity shall provide a minimum 30 day notice followed by a public hearing prior to enacting a prohibition on the sale or use of a recyclable product.

The amendments were read.

Senator West moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 694** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Fraser, Duncan, Uresti, and Harris.

### **SENATE BILL 1717 WITH HOUSE AMENDMENTS (Motion In Writing)**

Senator Duncan called **SB 1717** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Amendment**

Amend **SB 1717** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the operation and administration of the judicial branch of state government.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

#### ARTICLE 1. APPELLATE COURT PROVISIONS

SECTION 1.01. Section 22.002(b), Government Code, is amended to read as follows:

(b) The supreme court or, in vacation, a justice of the supreme court may issue a writ of mandamus to compel a statutory county court judge, a statutory probate court judge, or a district judge to proceed to trial and judgment in a case ~~[agreeable to the principles and usages of law, returnable to the supreme court on or before the first day of the term, or during the session of the term, or before any justice of the supreme court as the nature of the case requires].~~

SECTION 1.02. (a) Section 24.007, Property Code, is amended to read as follows:

Sec. 24.007. APPEAL. (a) ~~[A final judgment of a county court in an eviction suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only.]~~ A judgment of a county court in an eviction suit may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

(b) Notwithstanding any other law, an appeal may be taken from a final judgment of a county court, statutory county court, statutory probate court, or district court in an eviction suit.

(b) The change in law made by this section applies to an appeal of a final judgment rendered on or after the effective date of this section. An appeal of a final judgment rendered before the effective date of this section is governed by the law in effect on the date the judgment was rendered, and the former law is continued in effect for that purpose.

## ARTICLE 2. GENERAL PROVISIONS FOR DISTRICT COURTS

SECTION 2.01. Section 24.002, Government Code, is amended to read as follows:

Sec. 24.002. ASSIGNMENT OF JUDGE OR TRANSFER OF CASE ON RECUSAL ~~[SUBSTITUTE JUDGES]~~. If a district judge determines on the judge's own motion that the judge should not sit in a case pending in the judge's court because the judge is disqualified or otherwise should recuse himself or herself, the judge shall enter a recusal order, request the presiding judge of that administrative judicial region to assign another judge to sit, and take no further action in the case except for good cause stated in the order in which the action is taken. A change of venue is not necessary because of the disqualification of a district judge in a case or proceeding pending in the judge's [his] court[, but the judge shall immediately certify his disqualification to the governor. The governor shall designate a district judge of another district to exchange benches with the disqualified judge to try the case. The governor shall notify both judges of his designation, and the judges shall exchange benches. If the judges are prevented from exchanging benches, the parties or their counsels may agree on an attorney of the court for the trial of the case. The district judge or special judge shall certify to the governor the fact of a failure of the parties or their counsels to agree on an attorney, and the governor shall appoint a person legally qualified to act as judge in the trial of the case].

SECTION 2.02. Sections 24.003 and 24.007, Government Code, are amended to read as follows:

Sec. 24.003. TRANSFER OF CASES; EXCHANGE OF BENCHES ~~[SUBSTITUTE JUDGES IN CERTAIN COUNTIES]~~. (a) This section applies only to ~~[civil cases in]~~ counties with two ~~[five]~~ or more district courts.

(b) Unless provided otherwise by the local rules of administration, a district judge in the county may:

(1) transfer any civil or criminal case or proceeding on the court's docket to the docket of another district court in the county;

(2) hear and determine any case or proceeding pending in another district court in the county without having the case transferred;

(3) sit for another district court in the county and hear and determine any case or proceeding pending in that court;

(4) temporarily exchange benches with the judge of another district court in the county;

(5) try different cases in the same court at the same time; and

(6) occupy the judge's own courtroom or the courtroom of another district court in the county.

(c) If a district judge in the county is sick or otherwise absent, another district judge in the county may hold court for the judge.

(d) A district judge in the county may hear and determine any part or question of any case or proceeding pending in any of the district courts, and any other district judge may complete the hearing and render judgment in the case or proceeding. A district judge may hear and determine motions, including motions for new trial, petitions for injunction, applications for the appointment of a receiver, interventions, pleas in abatement, dilatory pleas, and all preliminary matters, questions, and proceedings, and may enter judgment or order on them in the court in which the case or proceeding is pending without transferring the case or proceeding. The district judge in whose court the matter is pending may proceed to hear, complete, and determine the matter, or all or any part of another matter, and render a final judgment. A district judge may issue a restraining order or injunction that is returnable to any other district court.

(e) A judgment or order shall be entered in the minutes of the court in which the case is pending.

(f) This section does not limit the powers of a district judge when acting for another judge by exchange of benches or otherwise. ~~[If a district judge is disqualified in a case pending in his court and his disqualification is certified to the governor, the governor may require any other district judge in the county to exchange benches with the disqualified judge.]~~

~~[(e) If a district judge is absent, sick, or disqualified, any of the district judges in the county may hold court for him or may transfer a pending case to the court of any other district judge in the county.]~~

Sec. 24.007. JURISDICTION. (a) The district court has the jurisdiction provided by Article V, Section 8, of the Texas Constitution.

(b) A district court has original jurisdiction of a civil matter in which the amount in controversy is more than \$500, exclusive of interest.

SECTION 2.03. Section 24.012(a), Government Code, is amended to read as follows:

(a) Notwithstanding any other law, each ~~[Each]~~ district ~~[and criminal district]~~ court holds in each county in the judicial district ~~[at least two]~~ terms that commence on the first Mondays in January and July of ~~[court]~~ each year ~~[in each county in the district]~~. To the extent of a conflict between this subsection and a specific provision relating to a particular judicial district, this section controls.

SECTION 2.04. Subchapter A, Chapter 24, Government Code, is amended by adding Sections 24.023, 24.024, 24.025, 24.026, 24.027, 24.028, 24.029, 24.030, and 24.031 to read as follows:

Sec. 24.023. OBLIGATIONS; BONDS. (a) When a case is transferred from one court to another, all processes, writs, bonds, recognizances, and other obligations issued by the transferring court are returnable to the court to which the case is transferred as if originally issued by that court.

(b) The obligees in all bonds and recognizances taken in and for a court from which a case is transferred, and all witnesses summoned to appear in a district court from which a case is transferred, are required to appear before the court to which the case is transferred as if the bond, recognizance, or summons was taken in or for that court.

Sec. 24.024. FILING AND DOCKETING CASES. In a county with two or more district courts, the district judges may adopt rules governing the filing and numbering of cases, the assignment of cases for trial, and the distribution of the work of the courts as in their discretion they consider necessary or desirable for the orderly dispatch of the business of the courts.

Sec. 24.025. SUPPLEMENTAL COMPENSATION. (a) Unless otherwise provided by this subchapter, all district judges in a county are entitled to equal amounts of supplemental compensation from the county.

(b) A district judge is entitled to an amount of supplemental compensation for serving on the juvenile board of a county that is equal to the amount other judges serving on the juvenile board receive.

Sec. 24.026. APPOINTMENT OF INITIAL JUDGE. On the creation of a new judicial district, the initial vacancy in the office of district judge is filled in accordance with Section 28, Article V, Texas Constitution.

Sec. 24.027. GRAND AND PETIT JURORS. All grand and petit jurors selected in a county before a new district court is created or the composition of an existing district court is modified by an amendment to this chapter are considered to be selected for the new or modified district court, as applicable.

Sec. 24.028. CASES TRANSFERRED. If by an amendment to this chapter a county is removed from the composition of an existing judicial district and added to another existing or new judicial district, all cases and proceedings from that county that are pending in the district court of the judicial district from which the county was removed are transferred to the district court of the judicial district to which the county is added. The judge of each affected district court shall sign the proper orders in connection with the transfer.

Sec. 24.029. PROCESSES, WRITS, AND OTHER OBLIGATIONS REMAIN VALID. (a) If by an amendment to this chapter a county is removed from the composition of an existing judicial district and added to another existing or new judicial district, or if an amendment to this chapter changes the time or place at which the terms of court are held, all processes, writs, bonds, recognizances, and other obligations issued from and made returnable to that court before the effective date of the transfer or other change are returnable as provided by this subsection. An obligation issued from the affected court is returnable to another district court in the county on the date that court directs, but may not be made returnable on a date that is earlier than the date on which the obligation was originally returnable. The obligations are legal and valid as if the obligations had been made returnable to the issuing court.

(b) The obligees in all appearance bonds and recognizances taken in and for a district court of a county before the effective date of an amendment to this chapter, and all witnesses summoned to appear before that district court under laws existing before the effective date of an amendment to this chapter, are required to appear at another district court in the county on the date that court directs, but may not be required to appear on a date that is earlier than the date on which the obligees or witnesses were originally required to appear.

Sec. 24.030. LOCATION OF COURT. (a) A district court shall sit in the county seat for a jury trial in a civil case. The commissioners court of the county may authorize a district court to sit in any municipality within the county to hear and

determine nonjury trials in civil cases and to hear and determine motions, arguments, and other matters not heard before a jury in a civil case that is within the court's jurisdiction.

(b) The district clerk or the clerk's deputy serves as clerk of the court when a court sits in a municipality other than the municipality that is the county seat and may transfer:

(1) all necessary books, minutes, records, and papers to that municipality while the court is in session there; and

(2) the books, minutes, records, and papers back to the clerk's office in the county seat at the end of each session.

(c) If the commissioners court authorizes a district court to sit in a municipality other than the municipality that is the county seat, the commissioners court shall provide suitable facilities for the court in that municipality.

Sec. 24.031. COURT OFFICERS. The prosecuting attorney, the sheriff, the district clerk, the bailiffs, and the other officers serving the other district courts of the county shall serve in their respective capacities for the courts listed in this chapter.

SECTION 2.05. Section 25.0362(g), Government Code, is amended to read as follows:

(g) In matters of concurrent jurisdiction, a judge of a county court at law and a judge of a district court in Cass County may transfer cases between the courts in the same manner that judges of district courts may transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.06. Section 25.0732(w), Government Code, is amended to read as follows:

(w) In matters of concurrent jurisdiction, a judge of a statutory county court in El Paso County and a judge of a district court or another statutory county court in El Paso County may transfer cases between the courts in the same manner judges of district courts transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.07. Section 25.1672(c), Government Code, is amended to read as follows:

(c) In matters of concurrent jurisdiction, judges of the county courts at law and district courts in the county may exchange benches and courtrooms and may transfer cases between their dockets in the same manner that district court judges exchange benches and transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.08. Section 25.1862(v), Government Code, is amended to read as follows:

(v) In matters of concurrent jurisdiction, a judge of a county court at law and a judge of a district court or another county court at law may transfer cases between the courts in the same manner judges of district courts transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.09. Section 25.1932(k), Government Code, is amended to read as follows:



(k) Notwithstanding Section 74.121(b)(1), in matters of concurrent jurisdiction, the judge of a county court at law and the judges of the district courts in the county may exchange benches and courtrooms and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.10. Section 74.121(b)(2), Government Code, is amended to read as follows:

(2) Notwithstanding Subdivision (1), in matters of concurrent jurisdiction, a judge of a statutory county court in Midland County and a judge of a district court in Midland County may exchange benches and courtrooms with each other and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.11. Section 659.012(d), Government Code, is amended to read as follows:

(d) Notwithstanding any other provision in this section or other law, in [It] a county with more than five district courts, a district judge who serves as a local administrative district judge under Section 74.091 is entitled to an annual salary from the state that is \$5,000 more than the salary from the state to which the judge is otherwise entitled [~~under Subsection (a)(1)~~].

SECTION 2.12. The following provisions of the Government Code are repealed:

- (1) Section 24.013;
- (2) Section 24.302;
- (3) Section 24.303;
- (4) Section 24.304;
- (5) Section 24.305;
- (6) Section 24.307;
- (7) Section 24.308;
- (8) Section 24.309;
- (9) Section 24.311;
- (10) Section 24.312;
- (11) Section 24.313;
- (12) Section 24.314;
- (13) Section 24.525(b);
- (14) Section 24.526(b);
- (15) Section 24.527(b);
- (16) Sections 24.528(b) and (c); and
- (17) Sections 24.529(b) and (c).

### ARTICLE 3. STATUTORY COUNTY COURTS

SECTION 3.01. Section 25.0002, Government Code, is amended to read as follows:

Sec. 25.0002. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Criminal law cases and proceedings" includes cases and proceedings for allegations of conduct punishable in part by confinement in the county jail not to exceed one year.

(2) "Family[~~,"family~~] law cases and proceedings" includes cases and proceedings under Titles 1, 2, 4, and 5, Family Code [~~involving adoptions, birth records, or removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support, custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses~~].

(3) "Juvenile law cases and proceedings" includes all cases and proceedings brought under Title 3, Family Code.

(4) "Mental health cases and proceedings" includes all cases and proceedings brought under Chapter 462, Health and Safety Code, or Subtitle C or D, Title 7, Health and Safety Code.

SECTION 3.02. Section 25.0003(c), Government Code, is amended to read as follows:

(c) In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 [~~\$100,000~~], excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition; and

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

SECTION 3.03. Section 25.0004, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The judge of a statutory county court does not have general supervisory control or appellate review of the commissioners court.

(g) A judge of a statutory county court has the judicial immunity of a district judge.

SECTION 3.04. Section 25.0007, Government Code, is amended to read as follows:

Sec. 25.0007. JURIES; PRACTICE AND PROCEDURE. (a) The drawing of jury panels, selection of jurors, and practice in the statutory county courts must conform to that prescribed by law for county courts.

(b) Practice in a statutory county court is that prescribed by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the statutory county courts, other than the number of jurors, that involve those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to district courts. This section does not affect local rules of administration adopted under Section 74.093.

SECTION 3.05. Section 25.0010, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) The county attorney or criminal district attorney [~~and sheriff~~] shall serve each statutory county court as required by law.

(c) A county sheriff shall in person or by deputy attend a statutory county court as required by the court.

(d) The county clerk shall serve as clerk of each statutory county court. The court officials shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for those offices.

(e) The judge of a statutory county court may appoint the personnel necessary for the operation of the court, including a court coordinator or administrative assistant, if the commissioners court has approved the creation of the position.

(f) The commissioners court may authorize the employment of as many additional assistant district attorneys, assistant county attorneys, deputy sheriffs, and clerks as are necessary for a statutory county court.

SECTION 3.06. (a) Section 25.0014, Government Code, is amended to read as follows:

Sec. 25.0014. QUALIFICATIONS OF JUDGE. The judge of a statutory county court must:

(1) be at least 25 years of age;

(2) be a United States citizen and have resided in the county for at least two years before election or appointment; and

(3) be a licensed attorney in this state who has practiced law or served as a judge of a court in this state, or both combined, for the four years preceding election or appointment, unless otherwise provided for by law.

(b) The change in law made by this Act to Section 25.0014, Government Code, does not apply to a person serving as a statutory county court judge immediately before the effective date of this Act who met the qualifications of Section 25.0014, Government Code, as it existed on that date, and the former law is continued in effect for determining that person's qualifications to serve as a statutory county court judge.

SECTION 3.07. Subchapter A, Chapter 25, Government Code, is amended by adding Sections 25.0016 and 25.00161 to read as follows:

Sec. 25.0016. TERMS OF COURT. The commissioners court, by order, shall set at least two terms a year for the statutory county court.

Sec. 25.00161. PRIVATE PRACTICE OF LAW. Except as otherwise provided by law, the regular judge of a statutory county court shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

SECTION 3.08. Section 25.0022(t), Government Code, is amended to read as follows:

(t) To be eligible for assignment under this section, a former or retired judge of a statutory probate court must:

(1) not have been removed from office;

(2) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge has not been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the judge:

(i) did not resign or retire from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation;

(3) annually demonstrate that the judge has completed in the past state fiscal year the educational requirements for an active statutory probate court judge;

(4) have served as an active judge for at least 72 ~~[96]~~ months in a district, statutory probate, statutory county, or appellate court; and

(5) have developed substantial experience in the judge's area of specialty.

SECTION 3.09. Section 25.00231, Government Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) In lieu of the bond required by Subsection (b), a county may elect to obtain insurance or to self-insure in the amount required by Subsection (b) against losses caused by the statutory probate court judge's gross negligence in performing the duties of office.

(e) This section does not apply to an assigned or visiting judge sitting by assignment in a statutory probate court.

SECTION 3.10. (a) Sections 25.00255(g), (g-1), (i), (i-1), (i-2), (i-3), (i-5), (k), (l), and (m), Government Code, are amended to read as follows:

(g) A judge who recuses himself or herself:

(1) shall enter an order of recusal and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge of the statutory probate courts ~~[administrative judicial district]~~ assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (l), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of one of the other statutory probate courts located in the county; and

(2) may not take other action in the case except for good cause stated in the order in which the action is taken.

(g-1) A judge who disqualifies himself or herself:

(1) shall enter an order of disqualification and request that the presiding judge of the statutory probate courts ~~[administrative judicial district]~~ assign a judge under Section 25.002201 to hear the case; and

(2) may not take other action in the case.

(i) After receiving a request under Subsection (h), the presiding judge of the statutory probate courts, subject to and except as provided by this section, shall ~~[immediately forward the request to the presiding judge of the administrative judicial district and request that the presiding judge of the administrative judicial district]~~

assign a judge to hear the motion for recusal or disqualification. The presiding judge may not assign a judge of a statutory probate court to hear a motion under this subsection if the judge of the statutory probate court serves in the same county as the statutory probate court judge who is the subject of the motion. If the judge who is the subject of a motion for recusal or disqualification serves as the presiding judge of the statutory probate courts, the chief justice of the supreme court shall assign a judge to hear the motion ~~[Not later than the 15th day after the date the presiding judge of the administrative judicial district receives the request, the presiding judge shall:~~

~~[(1) set a hearing before himself or herself or a judge designated by the presiding judge, except that the presiding judge may not designate a judge of a statutory probate court in the same county as the statutory probate court served by the judge who is the subject of the motion;~~

~~[(2) cause notice of the hearing to be given to all parties or their counsel to the case; and~~

~~[(3) make other orders, including orders for interim or ancillary relief, in the pending case].~~

(i-1) The judge assigned to hear a motion for recusal or disqualification under Subsection (i) shall:

(1) set a hearing;

(2) cause notice of the hearing to be given to all parties or their counsel to the case; and

(3) make other orders, including orders for interim or ancillary relief, in the pending case ~~[If the presiding judge of the administrative judicial district does not assign a judge to hear a motion for recusal or disqualification within the time prescribed by Subsection (i), the presiding judge of the statutory probate courts may assign a judge to hear the motion and take other action under that subsection].~~

(i-2) A judge who hears a motion for recusal or disqualification under Subsection ~~[(i) or]~~ (i-1) may also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(i-3) If a motion for recusal or disqualification is granted after a hearing conducted as provided by Subsection ~~[(i) or]~~ (i-1), the judge who heard the motion shall:

(1) if the judge subject to recusal or disqualification serves a statutory probate court located in a county with only one statutory probate court, enter an order of recusal or disqualification, as appropriate, and request that the presiding judge of the statutory probate courts ~~[administrative judicial district]~~ assign a judge under Section 25.002201 to hear the case; or

(2) subject to Subsection (1), if the judge subject to recusal or disqualification serves a statutory probate court located in a county with more than one statutory probate court, enter an order of recusal or disqualification, as appropriate, and request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of one of the other statutory probate courts located in the county.

(i-5) A judge assigned to hear a motion for recusal or disqualification under Subsection (i) is entitled to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned

under Section 25.0022[, ~~except that a judge assigned under Subsection (i) shall provide the information required by Section 25.0022(1) to the presiding judge of the administrative judicial district, who shall immediately forward the information to the presiding judge of the statutory probate courts.~~].

(k) A party may file a motion for sanctions alleging that another party in the case filed a motion for the recusal or disqualification of a judge solely to delay the case and without sufficient cause. The presiding judge of the statutory probate courts [~~administrative judicial district~~] or the judge assigned to hear the motion for recusal may approve a motion for sanctions authorized by Rule 215.2(b), Texas Rules of Civil Procedure.

(l) If a clerk of a statutory probate court is unable to reassign a case as requested under Subsection (g)(1)(B) or (i-3)(2) because the other statutory probate court judges in the county have been recused or disqualified or are otherwise unavailable to hear the case, the clerk shall immediately notify the presiding judge of the statutory probate courts [~~administrative judicial district~~] and request that the presiding judge of the statutory probate courts [~~administrative judicial district~~] assign a judge under Section 25.002201 to hear the case.

(m) The clerk of a statutory probate court shall immediately notify and provide to the presiding judge of the statutory probate courts a copy of an order of recusal or disqualification issued with respect to the judge of a [the] statutory probate court.

(b) Sections 25.002201(a) and (b), Government Code, are amended to read as follows:

(a) Not later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in a case, the presiding judge of the statutory probate courts, except as provided by Subsection (b), [~~administrative judicial district~~] shall assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case if:

(1) the judge of the statutory probate court recused himself or herself under Section 25.00255(g)(1)(A);

(2) the judge of the statutory probate court disqualified himself or herself under Section 25.00255(g-1);

(3) the order was issued under Section 25.00255(i-3)(1); or

(4) the presiding judge of the statutory probate courts [~~administrative judicial district~~] receives notice and a request for assignment from the clerk of the statutory probate court under Section 25.00255(l).

(b) If the [presiding] judge who is the subject of an order of recusal or disqualification is [~~of an administrative judicial district does not assign a judge under Subsection (a) within the time prescribed by that subsection,~~] the presiding judge of the statutory probate courts, the chief justice of the supreme court shall [~~may~~] assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case [~~instead of the presiding judge of the administrative judicial district making the assignment under that subsection~~].

(c) Section 25.00255(i-4), Government Code, is repealed.

(d) The changes in law made by this section apply only to a motion for recusal or disqualification of a judge that is filed on or after the effective date of this Act. A motion for recusal or disqualification of a judge filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

SECTION 3.11. (a) Subchapter B, Chapter 25, Government Code, is amended by adding Sections 25.0033, 25.0034, and 25.0035 to read as follows:

Sec. 25.0033. QUALIFICATIONS OF JUDGE. The judge of a statutory probate court must:

(1) be at least 25 years of age;

(2) be a United States citizen and have resided in the county for at least two years before election or appointment; and

(3) be a licensed attorney in this state who has practiced law or served as a judge of a court in this state, or both combined, for the five years preceding election or appointment, unless otherwise provided for by law.

Sec. 25.0034. PRIVATE PRACTICE OF LAW. The regular judge of a statutory probate court shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

Sec. 25.0035. TERMS OF COURT. The commissioners court, by order, shall set at least two terms a year for the statutory probate court.

(b) Section 25.0033, Government Code, as added by this Act, does not apply to a person serving as a statutory probate court judge immediately before the effective date of this Act. The qualifications of a person serving as a statutory probate court judge on the effective date of this Act are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 3.12. Sections 25.0042(g) and (i), Government Code, are amended to read as follows:

(g) The district clerk serves as clerk of a county court at law in all cases arising under the Family Code and Section 23.001 and shall establish a separate docket for a county court at law; the county clerk serves as clerk of the court in all other cases. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.]~~

(i) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases under the Family Code and Section 23.001 are governed by this section and the laws and rules pertaining to district courts and county courts.]~~ If a case under the Family Code or Section 23.001 is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.13. Section 25.0102(h), Government Code, is amended to read as follows:

(h) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving family law cases and proceedings shall be governed by this~~

~~section and the laws and rules pertaining to district courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members. In~~;~~~~in~~ all other cases the jury shall be composed of six members.

SECTION 3.14. Sections 25.0132(e) and (f), Government Code, are amended to read as follows:

(e) The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve a county court at law.]~~

(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings is that prescribed by law for district courts and county courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.15. Section 25.0202(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Bosque County has concurrent jurisdiction with the district court in:

- (1) family law cases and proceedings;
- (2) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 ~~[\$100,000]~~, excluding interest, court costs, and attorney's fees; and
- (3) contested probate matters ~~[under Section 5(b), Texas Probate Code]~~.

SECTION 3.16. Section 25.0212(b), Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony criminal matters;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct;
- (4) contested elections; or
- (5) civil cases in which the matter in controversy exceeds \$200,000 ~~[\$100,000]~~, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition.

SECTION 3.17. Sections 25.0222(a) and (k), Government Code, are amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

- (1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 ~~[\$100,000]~~, excluding interest, statutory damages and penalties, and attorney's fees and costs, as alleged on the face of the petition;



(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy; and

(3) family law cases and proceedings and juvenile jurisdiction under Section 23.001.

(k) The district clerk serves as clerk of the statutory county courts in cases instituted in the district courts in which the district courts and statutory county courts have concurrent jurisdiction, and the county clerk serves as clerk for all other cases. ~~[The commissioners court may employ as many additional assistant criminal district attorneys, deputy sheriffs, and deputy clerks as are necessary to serve the statutory county courts.]~~

SECTION 3.18. Sections 25.0302(e) and (f), Government Code, are amended to read as follows:

(e) The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ the assistant district attorneys, deputy sheriffs, and bailiffs necessary to serve each county court at law.]~~

(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.19. Section 25.0312(b), Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony cases other than writs of habeas corpus;
- (2) misdemeanors involving official misconduct;
- (3) contested elections; or
- (4) appeals from county court.

SECTION 3.20. Section 25.0362(b), Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) misdemeanors involving official misconduct;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) contested elections;
- (4) suits in which the county is a party; or
- (5) felony cases involving capital murder.

SECTION 3.21. Section 25.0482(f), Government Code, is amended to read as follows:

(f) The district clerk serves as clerk of a county court at law for family law cases and proceedings, and the county clerk serves as clerk for all other cases and proceedings. ~~[The district clerk shall establish a separate docket for a county court at law. The commissioners court may employ as many assistant county attorneys, deputy sheriffs, and bailiffs as are necessary to serve the county courts at law.]~~

SECTION 3.22. Section 25.0632(g), Government Code, is amended to read as follows:

(g) ~~[Jurors regularly impaneled for the week by the district courts of Denton County must include sufficient numbers to serve in the statutory county courts and statutory probate courts as well as the district courts. The jurors shall be made available by the district judge as necessary.]~~ The jury in a statutory county court or statutory probate court in all civil or criminal matters is composed of 12 members, except that in misdemeanor criminal cases and any other case in which the court has jurisdiction that under general law would be concurrent with the county court, the jury is composed of six members.

SECTION 3.23. Section 25.0732(r), Government Code, is amended to read as follows:

(r) Section ~~[Sections]~~ 25.0006(b) does ~~[and 25.0007 do]~~ not apply to County Court at Law No. 2, 3, 4, 5, 6, or 7 of El Paso County, Texas.

SECTION 3.24. Section 25.0733(a), Government Code, is amended to read as follows:

(a) Sections 25.0732(q) and ~~[25.0732(d), (h), (i), (j), (m), (n), (o), (p), (q), (r), and (v)]~~, relating to county courts at law in El Paso County, apply to a statutory probate court in El Paso County.

SECTION 3.25. Sections 25.0862(i) and (l), Government Code, are amended to read as follows:

(i) ~~[The clerk of the statutory county courts and statutory probate court shall keep a separate docket for each court.]~~ The clerk shall tax the official court reporter's fees as costs in civil actions in the same manner as the fee is taxed in civil cases in the district courts. ~~[The district clerk serves as clerk of the county courts in a cause of action arising under the Family Code and an appeal of a final ruling or decision of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, and the county clerk serves as clerk of the court in all other cases.]~~

(l) Each reporter may be made available when not engaged in proceedings in their court to report proceedings in all other courts. ~~[Practice, appeals, and writs of error in a statutory county court are as prescribed by law for county courts and county courts at law.]~~ Appeals and writs of error may be taken from judgments and orders of the County Courts Nos. 1, 2, and 3 of Galveston County and the judges, in civil and criminal cases, in the manner prescribed by law for appeals and writs of error. Appeals from interlocutory orders of the County Courts Nos. 1, 2, and 3 appointing a receiver or overruling a motion to vacate or appoint a receiver may be taken and are governed by the laws relating to appeals from similar orders of district courts.

SECTION 3.26. Section 25.0962(f), Government Code, is amended to read as follows:

(f) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases in the court's concurrent jurisdiction with the district court shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.~~] If a case in the court's concurrent jurisdiction with the district court is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.27. Section 25.1033(a), Government Code, is amended to read as follows:

(a) A county criminal court at law in Harris County has the criminal jurisdiction provided by law for county courts, concurrent jurisdiction with civil statutory county courts for Harris County to hear appeals of the suspension of a driver's license and original proceedings regarding occupational driver's licenses, and appellate jurisdiction in appeals of criminal cases from justice courts and municipal courts in the county.

SECTION 3.28. Section 25.1042(g), Government Code, is amended to read as follows:

(g) The criminal district attorney is entitled to the same fees prescribed by law for prosecutions in the county court. [~~The commissioners court may employ as many additional deputy sheriffs and clerks as are necessary to serve a county court at law.~~]

SECTION 3.29. Sections 25.1072(e) and (f), Government Code, are amended to read as follows:

(e) The county clerk serves as clerk of a county court at law, except that the district clerk serves as clerk of the court in family law cases and proceedings. The district clerk shall establish a separate docket for a county court at law. [~~The commissioners court may employ as many assistant district attorneys, deputy sheriffs, and bailiffs as are necessary to serve the court.~~]

(f) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings are governed by this section and the laws and rules pertaining to district courts, as well as county courts.~~] If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.30. Section 25.1142(b), Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) civil cases in which the amount in controversy exceeds \$200,000 [~~\$100,000~~], excluding interest;
- (2) felony jury trials;
- (3) suits on behalf of the state to recover penalties or escheated property;
- (4) misdemeanors involving official misconduct; or
- (5) contested elections.

SECTION 3.31. Section 25.1182(b), Government Code, is amended to read as follows:

(b) A county court at law's civil jurisdiction concurrent with the district court in civil cases is limited to cases in which the matter in controversy does not exceed \$200,000. A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) suits on behalf of this state to recover penalties or escheated property;
- (2) felony cases involving capital murder;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.32. Section 25.1312(b), Government Code, is amended to read as follows:

(b) A statutory county court in Kaufman County does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony cases involving capital murder;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.33. Section 25.1542(m), Government Code, is amended to read as follows:

(m) ~~[Practice and procedure and rules of evidence governing trials in and appeals from a county court apply to a county court at law, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.]~~ In family law cases, juries shall be composed of 12 members.

SECTION 3.34. Section 25.1652(g), Government Code, is amended to read as follows:

(g) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law matters and proceedings shall be governed by this section and the laws and rules pertaining to district courts.]~~ If a family law case is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.35. Section 25.1762(i), Government Code, is amended to read as follows:

(i) ~~[The laws governing the drawing, selection, service, and pay of jurors for county courts apply to a county court at law. Jurors regularly impaneled for a week by a district court may, at the request of the judge of a county court at law, be made available by the district judge in the numbers requested and shall serve for the week in the county court at law.]~~ In matters of concurrent jurisdiction with the district court, if a party to a suit files a written request for a 12-member jury with the clerk of the county court at law at a reasonable time that is not later than 30 days before the date the suit is set for trial, the jury shall be composed of 12 members.

SECTION 3.36. Section 25.1772(b), Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) suits on behalf of this state to recover penalties or escheated property;
- (2) felony cases involving capital murder;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.37. Section 25.1892(e), Government Code, is amended to read as follows:

(e) [~~The county attorney or district attorney serves a county court at law as required by the judge.~~] The district clerk serves as clerk of a county court at law in cases enumerated in Subsection (a)(2), and the county clerk serves as clerk in all other cases. The district clerk shall establish a separate docket for a county court at law. [~~The commissioners court may employ as many additional assistant county attorneys, deputy sheriffs, and clerks as are necessary to serve a county court at law.~~]

SECTION 3.38. Section 25.1932(i), Government Code, is amended to read as follows:

(i) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases in the court's concurrent jurisdiction with the district court shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.~~] If a case in the court's concurrent jurisdiction with the district court is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.39. Section 25.2012(b), Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) felony cases involving capital murder;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.40. Section 25.2142(n), Government Code, is amended to read as follows:

(n) [~~A special judge of a county court at law is entitled to receive for services actually performed the same amount of compensation as the regular judge.~~] A former judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata annuity received from any state, district, or county retirement fund. An active judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata compensation received from state or county funds as salary, including supplements.

SECTION 3.41. (a) Section 25.2222(b), Government Code, as amended by Chapter 22 (S.B. 124), Acts of the 72nd Legislature, Regular Session, 1991, and Chapter 265 (H.B. 7), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 and does not exceed \$200,000 [~~\$100,000~~], excluding mandatory damages and penalties, attorney's fees, interest, and costs;

(2) nonjury family law cases and proceedings;

(3) final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy;

(4) eminent domain proceedings, both statutory and inverse, regardless of the amount in controversy;

(5) suits to decide the issue of title to real or personal property;

(6) suits to recover damages for slander or defamation of character;

(7) suits for the enforcement of a lien on real property;

(8) suits for the forfeiture of a corporate charter;

(9) suits for the trial of the right to property valued at \$200 or more that has been levied on under a writ of execution, sequestration, or attachment; and

(10) suits for the recovery of real property.

(b) Section 25.2222(b), Government Code, as amended by Chapter 746 (H.B. 66), Acts of the 72nd Legislature, Regular Session, 1991, is repealed as duplicative of Section 25.2222(b), Government Code, as amended by Subsection (a) of this section.

SECTION 3.42. Section 25.2232(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Taylor County has:

(1) concurrent jurisdiction with the county court in the trial of cases involving insanity and approval of applications for admission to state hospitals and special schools if admission is by application; and

(2) concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 [~~\$100,000~~], excluding interest.

SECTION 3.43. Section 25.2352(i), Government Code, is amended to read as follows:

(i) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.~~] If a family law case is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.44. Section 25.2382(i), Government Code, is amended to read as follows:

(i) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving matters enumerated in Subsection (a)(2)(B) or (C) shall be governed~~

~~by this section and the laws and rules pertaining to district courts.]~~ If a family law case ~~[in Subsection (a)(2)(B) or (C)]~~ is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.45. (a) Section 25.2421(a), Government Code, is amended to read as follows:

(a) Webb County has the following statutory county courts:

- (1) the County Court at Law No. 1 of Webb County; ~~[and]~~
- (2) the County Court at Law No. 2 of Webb County; and
- (3) the County Court at Law No. 3 of Webb County.

(b) Notwithstanding Section 25.2421(a), Government Code, as amended by this Act, the County Court at Law No. 3 of Webb County is created January 1, 2031, or on an earlier date determined by the Commissioners Court of Webb County by an order entered in its minutes.

SECTION 3.46. Sections 25.2422(g) and (h), Government Code, are amended to read as follows:

(g) The district attorney of the 49th Judicial District serves as district attorney of a county court at law, except that the county attorney of Webb County prosecutes all juvenile, child welfare, mental health, and other civil cases in which the state is a party. The district clerk serves as clerk of a county court at law in the cases enumerated in Subsection (a)(2), and the county clerk serves as clerk of a county court at law in all other cases. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.]~~

(h) ~~[Practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (a)(2)(B) or (C) are governed by this section and the laws and rules pertaining to district courts, as well as county courts.]~~ If a family law case ~~[enumerated in Subsection (a)(2)(B) or (C)]~~ is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.47. Sections 25.2452(d) and (k), Government Code, are amended to read as follows:

(d) A county court at law does not have jurisdiction of:

(1) a case under:

- (A) the Alcoholic Beverage Code;
- (B) the Election Code; or
- (C) the Tax Code;

(2) a matter over which the district court has exclusive jurisdiction; or

(3) a civil case, other than a case under the Family Code or the Texas Probate Code, in which the amount in controversy is:

(A) less than the maximum amount in controversy allowed the justice court in Wichita County; or

(B) more than \$200,000 ~~[\$100,000]~~, exclusive of punitive or exemplary damages, penalties, interest, costs, and attorney's fees.

(k) Except as otherwise required by law, if a case is tried before a jury, the jury shall be composed of six members and may render verdicts by a five to one margin in civil cases and a unanimous verdict in criminal cases. ~~[The laws governing the~~

~~drawing, selection, service, and pay of jurors for county courts apply to the county courts at law. Jurors regularly impaneled for a week by a district court may, on request of the county judge exercising the jurisdiction provided by this section or a county court at law judge, be made available and shall serve for the week in the county court or county court at law.]~~

SECTION 3.48. Section 25.2462(h), Government Code, is amended to read as follows:

(h) ~~[The county attorney and the county sheriff shall attend a county court at law as required by the judge.]~~ The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings.

SECTION 3.49. Section 25.2482(i), Government Code, is amended to read as follows:

(i) ~~[The county attorney and the county sheriff shall attend a county court at law as required by the judge.]~~ The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings.

SECTION 3.50. Section 25.2512(a), Government Code, as amended by Chapters 518 (S.B. 1491) and 746 (H.B. 66), Acts of the 72nd Legislature, Regular Session, 1991, is reenacted and amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Wise County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) eminent domain cases;

(B) civil cases in which the amount in controversy exceeds \$500, but does not exceed \$200,000 ~~[\$100,000]~~, excluding interest and attorney's fees; and

(C) family law cases and proceedings.

SECTION 3.51. The following provisions of the Government Code are repealed:

(1) Sections 25.0042(b), (d), (f), and (j);

(2) Sections 25.0052(b), (f), (g), and (h);

(3) Sections 25.0102(b), (d), (f), and (i);

(4) Sections 25.0132(d), (g), and (h);

(5) Sections 25.0152(c) and (e);

(6) Sections 25.0162(b), (f), (g), (h), and (i);

(7) Sections 25.0172(d), (k), (l), (m), (n), (o), (q), (s), and (t);

(8) Sections 25.0173(c), (d), (h), (i), and (k);

(9) Sections 25.0202(c), (d), and (g);

(10) Sections 25.0212(c), (e), and (g);

(11) Sections 25.0222(d), (e), (i), (j), and (n);

(12) Sections 25.0232(b), (d), (f), (h), and (i);

(13) Sections 25.0272(b), (c), and (e);

(14) Sections 25.0292(b), (c), (g), (h), and (i);

(15) Sections 25.0302(b), (d), and (g);



- (16) Sections 25.0312(c), (e), and (j);
- (17) Sections 25.0332(e), (g), (i), (k), (l), and (m);
- (18) Section 25.0362(c);
- (19) Sections 25.0392(b), (d), (f), (i), (j), and (k);
- (20) Sections 25.0452(b), (c), and (d);
- (21) Sections 25.0453(a), (c), (d), and (e);
- (22) Sections 25.0482(b), (d), (e), (g), and (h);
- (23) Sections 25.0512(a), (b), (d), (g), and (h);
- (24) Sections 25.0522(b), (d), (f), and (g);
- (25) Sections 25.0592(b), (h), (i), (j), and (k);
- (26) Sections 25.0593(d), (f), (g), (h), (i), and (j);
- (27) Sections 25.0594(d), (e), (g), (h), (i), (j), and (k);
- (28) Sections 25.0595(c), (d), (f), and (g);
- (29) Section 25.0596;
- (30) Sections 25.0632(a), (b), and (d);
- (31) Sections 25.0702(b), (g), (h), (j), (k), and (l);
- (32) Sections 25.0722(b), (d), (f), (j), and (k);
- (33) Sections 25.0732(d), (g), (h), (i), (j), (m), (n), (o), (p), (s), and (v);
- (34) Sections 25.0733(c), (d), and (f);
- (35) Section 25.0742(b);
- (36) Sections 25.0812(d), (f), (h), (j), and (l);
- (37) Sections 25.0862(f) and (j);
- (38) Sections 25.0932(e), (f), and (i);
- (39) Sections 25.0942(c), (f), (g), (j), and (k);
- (40) Sections 25.0962(d), (e), and (g);
- (41) Sections 25.1032(d), (e), (g), (h), and (k);
- (42) Sections 25.1033(d), (e), (f), (m), and (o);
- (43) Sections 25.1034(c), (h), (k), and (l);
- (44) Sections 25.1042(b), (f), (h), and (i);
- (45) Sections 25.1072(b), (d), (g), and (h);
- (46) Sections 25.1092(e), (f), (l), and (o);
- (47) Sections 25.1102(d), (e), (h), (i), (j), and (l);
- (48) Section 25.1103;
- (49) Sections 25.1112(b), (c), (f), and (k);
- (50) Sections 25.1132(f), (g), (h), (j), (l), (m), and (p);
- (51) Sections 25.1142(c), (e), and (g);
- (52) Sections 25.1152(b), (e), (f), (h), and (i);
- (53) Sections 25.1182(c), (e), and (h);
- (54) Sections 25.1252(c), (g), and (i);
- (55) Sections 25.1282(b), (d), (f), (h), and (i);
- (56) Sections 25.1312(d), (e), (i), (k), (l), and (n);
- (57) Sections 25.1322(d), (e), (f), (i), and (j);
- (58) Sections 25.1352(d) and (h);
- (59) Sections 25.1392(e), (g), and (i);
- (60) Sections 25.1412(b), (c), (e), (h), (i), and (k);
- (61) Sections 25.1482(d), (g), (h), (l), and (m);

- (62) Sections 25.1542(f), (i), (k), and (n);
- (63) Sections 25.1572(e), (f), and (g);
- (64) Sections 25.1652(d), (f), and (h);
- (65) Sections 25.1672(b) and (f);
- (66) Sections 25.1722(b), (c), and (g);
- (67) Sections 25.1732(d), (e), (f), (h), and (i);
- (68) Sections 25.1762(b), (e), (f), and (h);
- (69) Sections 25.1772(c), (e), and (h);
- (70) Sections 25.1792(e), (f), (h), (i), and (j);
- (71) Sections 25.1802(c), (h), (i), (j), (k), (l), and (q);
- (72) Sections 25.1832(b), (d), and (j);
- (73) Sections 25.1852(e), (f), and (i);
- (74) Sections 25.1862(c), (f), (h), (i), (j), (m), (n), (p), (q), and (u);
- (75) Section 25.1892(d);
- (76) Sections 25.1902(e), (g), (i), (j), and (k);
- (77) Sections 25.1932(b), (c), (f), (h), and (j);
- (78) Sections 25.1972(b), (d), (f), (h), and (j);
- (79) Sections 25.2012(d), (e), (i), (k), (l), and (n);
- (80) Sections 25.2032(c), (e), and (h);
- (81) Sections 25.2072(c), (e), (f), (h), and (i);
- (82) Sections 25.2142(c), (e), (i), (r), (t), and (u);
- (83) Sections 25.2162(f), (h), (j), and (k);
- (84) Sections 25.2222(c), (g), (h), (i), (k), and (n);
- (85) Sections 25.2223(c), (e), (g), and (h);
- (86) Sections 25.2224(b), (c), (f), (g), (i), and (j);
- (87) Sections 25.2232(b), (e), (f), and (g);
- (88) Sections 25.2282(b), (d), (f), (g), (i), and (j);
- (89) Sections 25.2292(b), (e), (i), (k), and (l);
- (90) Sections 25.2293(e), (f), (g), (k), and (l);
- (91) Sections 25.2352(b), (d), (f), (g), and (j);
- (92) Sections 25.2362(c), (e), and (h);
- (93) Sections 25.2372(c), (f), (g), (h), and (i);
- (94) Sections 25.2382(b), (d), (f), and (j);
- (95) Sections 25.2392(b), (d), (f), and (j);
- (96) Sections 25.2412(b), (d), (f), (i), and (k);
- (97) Sections 25.2422(b), (d), (f), (i), and (j);
- (98) Sections 25.2452(f), (h), and (j);
- (99) Sections 25.2462(c), (d), (e), (g), (i), and (j);
- (100) Sections 25.2482(d), (e), (f), (h), (j), and (k); and
- (101) Sections 25.2512(b), (e), (h), and (i).

SECTION 3.52. Section 25.0022(t), Government Code, as amended by this article, applies only to an assignment of a visiting judge under Chapter 25, Government Code, made on or after the effective date of this Act. An assignment made before the effective date of this Act is governed by Section 25.0022(t), Government Code, as that section existed on the date of the assignment, and that law is continued in effect for that purpose.

## ARTICLE 4. PROVISIONS RELATING TO JUSTICE AND SMALL CLAIMS COURTS

SECTION 4.01. (a) Section 27.005, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) For purposes of removal under Chapter 87, Local Government Code, "incompetency" in the case of a justice of the peace includes the failure of the justice to successfully complete:

(1) within one year after the date the justice is first elected, an 80-hour course in the performance of the justice's duties; and

(2) each following year:

(A) [5] a 20-hour course in the performance of the justice's duties; and

(B) a 15-hour course regarding substantive, procedural, and evidentiary law in civil matters.

(c) The educational requirement in Subsection (a)(2)(B) applies only in a year in which funds are appropriated by the state for the purpose of funding the cost of attending the course.

(b) Subject to Subsection (c) of this section, Section 27.005(a), Government Code, as amended by this section, applies to a justice of the peace serving on or after the effective date of this article, regardless of the date the justice was elected or appointed.

(c) A justice of the peace serving on the effective date of this article must complete the justice's initial 15-hour course in substantive, procedural, and evidentiary law required by Section 27.005(a)(2)(B), Government Code, as added by this section, not later than December 31, 2012.

SECTION 4.02. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.060 to read as follows:

Sec. 27.060. SMALL CLAIMS. (a) A justice court shall conduct proceedings in a small claims case, as that term is defined by the supreme court, in accordance with rules of civil procedure promulgated by the supreme court to ensure the fair, expeditious, and inexpensive resolution of small claims cases.

(b) Except as provided by Subsection (c), rules of the supreme court must provide that:

(1) if both parties appear, the judge shall proceed to hear the case;

(2) formal pleadings other than the statement are not required;

(3) the judge shall hear the testimony of the parties and the witnesses that the parties produce and shall consider the other evidence offered;

(4) the hearing is informal, with the sole objective being to dispense speedy justice between the parties;

(5) discovery is limited to that considered appropriate and permitted by the judge; and

(6) the judge shall develop the facts of the case, and for that purpose may question a witness or party and may summon any party to appear as a witness as the judge considers necessary to a correct judgment and speedy disposition of the case.

(c) The rules of the supreme court must provide specific procedures for an action by:

(1) an assignee of a claim or other person seeking to bring an action on an assigned claim;  
(2) a person primarily engaged in the business of lending money at interest;  
or  
(3) a collection agency or collection agent.

SECTION 4.03. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.061 to read as follows:

Sec. 27.061. RULES OF ADMINISTRATION. The justices of the peace in each county shall, by majority vote, adopt local rules of administration.

SECTION 4.04. Subchapter E, Chapter 15, Civil Practice and Remedies Code, is amended by adding Section 15.0821 to read as follows:

Sec. 15.0821. ADMINISTRATIVE RULES FOR TRANSFER. The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending case from one precinct to a different precinct.

SECTION 4.05. Article 4.12, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending misdemeanor case from one precinct to a different precinct.

SECTION 4.06. (a) Chapter 28, Government Code, is repealed.

(b) On the effective date of this section, each small claims court under Chapter 28, Government Code, is abolished.

SECTION 4.07. Not later than May 1, 2013, the Texas Supreme Court shall promulgate:

- (1) rules to define cases that constitute small claims cases;
- (2) rules of civil procedure applicable to small claims cases as required by Section 27.060, Government Code, as added by this article; and
- (3) rules for eviction proceedings.

SECTION 4.08. (a) Immediately before the date the small claims court in a county is abolished in accordance with this article, the justice of the peace sitting as judge of that court shall transfer all cases pending in the court to a justice court in the county.

(b) When a case is transferred as provided by Subsection (a) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the transferring court and all witnesses summoned to appear in the transferring court are required to appear before the court to which the case is transferred as if originally required to appear before that court.

SECTION 4.09. Sections 4.02 and 4.06 of this article take effect May 1, 2013.

## ARTICLE 5. ASSOCIATE JUDGES

SECTION 5.01. Subtitle D, Title 2, Government Code, is amended by adding Chapter 54A to read as follows:

CHAPTER 54A. ASSOCIATE JUDGES  
SUBCHAPTER A. CRIMINAL ASSOCIATE JUDGES

Sec. 54A.001. APPLICABILITY. This subchapter applies to a district court or a statutory county court that hears criminal cases.

Sec. 54A.002. APPOINTMENT. (a) A judge of a court subject to this subchapter may appoint a full-time or part-time associate judge to perform the duties authorized by this subchapter if the commissioners court of the county in which the court has jurisdiction has authorized the creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county is subject to this subchapter, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 54A.003. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;  
(2) have been licensed to practice law in this state for at least four years;  
(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided by Section 33.022 and before final disposition of the proceedings.

Sec. 54A.004. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54A.005. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the associate judge's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the associate judge's employment ends.

Sec. 54A.006. PROCEEDINGS THAT MAY BE REFERRED. (a) A judge may refer to an associate judge any matter arising out of a criminal case involving:

- (1) a negotiated plea of guilty or no contest before the court;
- (2) a bond forfeiture;
- (3) a pretrial motion;
- (4) a writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) an appeal of an administrative driver's license revocation hearing;
- (8) a civil commitment matter under Subtitle C, Title 7, Health and Safety

Code;

- (9) setting, adjusting, or revoking bond; and
- (10) any other matter the judge considers necessary and proper.

(b) An associate judge may accept an agreed plea of guilty or no contest from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses and may assess punishment if a plea agreement is announced on the record between the defendant and the state.

(c) An associate judge has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) An associate judge may select a jury. Except as provided in Subsection (b), an associate judge may not preside over a trial on the merits, whether or not the trial is before a jury.

Sec. 54A.007. ORDER OF REFERRAL. (a) To refer one or more cases to an associate judge, a judge must issue a written order of referral that specifies the associate judge's duties.

(b) An order of referral may:

(1) limit the powers of the associate judge and direct the associate judge to report only on specific issues, do particular acts, or receive and report on evidence only;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the associate judge's findings;

(5) designate proceedings for more than one case over which the associate judge shall preside;

(6) direct the associate judge to call the court's docket; and

(7) set forth general powers and limitations or authority of the associate judge applicable to any case referred.

Sec. 54A.008. POWERS. (a) Except as limited by an order of referral, an associate judge to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue summons for the appearance of witnesses;  
(6) examine a witness;  
(7) swear a witness for a hearing;  
(8) make findings of fact on evidence;  
(9) formulate conclusions of law;  
(10) rule on pretrial motions;  
(11) recommend the rulings, orders, or judgment to be made in a case;  
(12) regulate proceedings in a hearing;  
(13) order the attachment of a witness or party who fails to obey a subpoena;  
(14) accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses;  
(15) select a jury; and  
(16) take action as necessary and proper for the efficient performance of the duties required by the order of referral.

(b) An associate judge may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the associate judge may make findings, conclusions, and recommendations on those issues.

(c) Except as limited by an order of referral, an associate judge who is appointed by a district or statutory county court judge and to whom a case is referred may accept a plea of guilty or nolo contendere in a misdemeanor case for a county criminal court. The associate judge shall forward any fee or fine collected for the misdemeanor offense to the county clerk.

(d) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 54A.009. ATTENDANCE OF BAILIFF. A bailiff shall attend a hearing by an associate judge if directed by the referring court.

Sec. 54A.010. COURT REPORTER. At the request of a party, the court shall provide a court reporter to record the proceedings before the associate judge.

Sec. 54A.011. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54A.012. PAPERS TRANSMITTED TO JUDGE. At the conclusion of the proceedings, an associate judge shall transmit to the referring court any papers relating to the case, including the associate judge's findings, conclusions, orders, recommendations, or other action taken.

Sec. 54A.013. JUDICIAL ACTION. (a) Not later than the 30th day after the date an action is taken by an associate judge, a referring court may modify, correct, reject, reverse, or recommit for further information the action taken by the associate judge.

(b) If the court does not modify, correct, reject, reverse, or recommit an action to the associate judge, the action becomes the decree of the court.

Sec. 54A.014. JUDICIAL IMMUNITY. An associate judge has the same judicial immunity as a district judge.

[Sections 54A.015-54A.100 reserved for expansion]

SUBCHAPTER B. CIVIL ASSOCIATE JUDGES

Sec. 54A.101. APPLICABILITY. This subchapter applies to a district court or a statutory county court that is assigned civil cases.

Sec. 54A.102. APPOINTMENT. (a) A judge of a court subject to this subchapter may appoint a full-time or part-time associate judge to perform the duties authorized by this subchapter if the commissioners court of the county in which the court has jurisdiction has authorized the creation of an associate judge position.

(b) If a district court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county is subject to this subchapter, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 54A.103. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;  
(2) have been licensed to practice law in this state for at least four years;  
(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before final disposition of the proceedings.

Sec. 54A.104. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54A.105. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.



(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the associate judge's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the associate judge's employment ends.

Sec. 54A.106. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a court may refer any civil case or portion of a civil case to an associate judge for resolution.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

Sec. 54A.107. METHODS OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order.

(b) The order of referral may limit the powers or duties of an associate judge.

Sec. 54A.108. POWERS. (a) Except as limited by an order of referral, an associate judge may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on pretrial motions;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) order the attachment of a witness or party who fails to obey a subpoena; and

(14) take action as necessary and proper for the efficient performance of the duties required by the order of referral.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 54A.109. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

- (1) failed to appear before an associate judge after being summoned; or
- (2) improperly refused to answer questions if the refusal has been certified to the court by the associate judge.

Sec. 54A.110. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record under Subsection (c) as costs.

(e) On appeal of the associate judge's report or proposed order, the referring court may consider testimony or other evidence in the record if the record is taken by a court reporter.

Sec. 54A.111. NOTICE OF DECISION; APPEAL. (a) After hearing a matter, an associate judge shall notify each attorney participating in the hearing of the associate judge's decision. An associate judge's decision has the same force and effect as an order of the referring court unless a party appeals the decision as provided by Subsection (b).

(b) To appeal an associate judge's decision, other than the issuance of a temporary restraining order or temporary injunction, a party must file an appeal in the referring court not later than the seventh day after the date the party receives notice of the decision under Subsection (a).

(c) A temporary restraining order issued by an associate judge is effective immediately and expires on the 15th day after the date of issuance unless, after a hearing, the order is modified or extended by the associate judge or referring judge.

(d) A temporary injunction issued by an associate judge is effective immediately and continues during the pendency of a trial unless, after a hearing, the order is modified by a referring judge.

(e) A matter appealed to the referring court shall be tried de novo and is limited to only those matters specified in the appeal. Except on leave of court, a party may not submit on appeal any additional evidence or pleadings.

Sec. 54A.112. NOTICE OF RIGHT TO DE NOVO HEARING; WAIVER. (a) Notice of the right to a de novo hearing before the referring court shall be given to all parties.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right of a de novo hearing before the referring court in writing or on the record.

Sec. 54A.113. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 54A.115, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 54A.114. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear additional evidence; or

(3) recommit the matter to the associate judge for further proceedings.

Sec. 54A.115. DE NOVO HEARING. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's decision as provided by Section 54A.111.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(d) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date the initial request was filed.

(e) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date the initial request for a de novo hearing was filed with the clerk of the referring court.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(g) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, a motion for judgment notwithstanding the verdict, or other posttrial motions.

(h) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 54A.116. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order or a default order is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 54A.117. JUDICIAL ACTION. (a) Not later than the 30th day after the date an action is taken by an associate judge, a referring court may modify, correct, reject, reverse, or recommit for further information the action taken by the associate judge.

(b) If the court does not modify, correct, reject, reverse, or recommit an action to the associate judge, the action becomes the decree of the court.

Sec. 54A.118. JUDICIAL IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a district judge.

SECTION 5.02. Subchapter G, Chapter 54, Government Code, is transferred to Chapter 54A, Government Code, as added by this Act, redesignated as Subchapter C, Chapter 54A, Government Code, and amended to read as follows:

SUBCHAPTER C ~~[G]~~. STATUTORY PROBATE COURT ASSOCIATE JUDGES

Sec. 54A.201 ~~[54.601]~~. DEFINITION. In this subchapter, "statutory probate court" has the meaning assigned by Section 3, Texas Probate Code.

Sec. 54A.202. APPLICABILITY. This subchapter applies to a statutory probate court.

Sec. 54A.203 ~~[54.603]~~. APPOINTMENT. (a) After obtaining the approval of the commissioners court to create an associate judge position, the judge of a statutory probate court by order may appoint one or more full-time or part-time ~~[a person to act as]~~ associate judges to perform the duties authorized by this subchapter ~~[judge for the statutory probate court]~~.

(b) If a statutory probate court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) The commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts, if more than one statutory probate court exists in a county.

(d) ~~[(e)]~~ If an associate judge serves more than one court, the associate judge's appointment must be made with the unanimous approval of all the judges under whom the associate judge serves.

~~[(d) An associate judge must meet the qualifications to serve as a judge of the court to which the associate judge is appointed.]~~

(e) An associate judge appointed under this subchapter may serve as an associate judge appointed under Section 574.0085, Health and Safety Code.

Sec. 54A.204. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;  
(2) have been licensed to practice law in this state for at least five years;  
(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before final disposition of the proceedings.

Sec. 54A.205 [54.605]. COMPENSATION. (a) An associate judge is entitled to the compensation set by the appointing judge and approved by the commissioners court or commissioners courts of the counties in which the associate judge serves. [The salary of the associate judge may not exceed the salary of the appointing judge.]

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) Except as provided by Subsection (d) [(e)], the compensation of the associate judge shall be paid by the county from the county general fund. The compensation must be paid in the same manner that the appointing judge's salary is paid.

(d) [(e)] On the recommendation of the statutory probate court judges in the county and subject to the approval of the county commissioners court, the county may pay all or part of the compensation of the associate judge from the excess contributions remitted to the county under Section 25.00212 and deposited in the contributions fund created under Section 25.00213.

Sec. 54A.206 [54.604]. TERMINATION OF ASSOCIATE JUDGE. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts that the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts that the associate judge serves.

(d) The appointment of the associate judge terminates if:

(1) the associate judge becomes a candidate for election to public office; or  
(2) the commissioners court does not appropriate funds in the county's budget to pay the salary of the associate judge.

(e) If an associate judge serves a single court and the appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment.

(f) If an associate judge serves two courts and one of the appointing judges vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment or the judge of the other court served by the associate judge terminates that employment as provided by Subsection (c).

(g) If an associate judge serves more than two courts and an appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless:

(1) if no successor judge has been elected or appointed, the majority of the judges of the other courts the associate judge serves vote to terminate that employment; or

(2) if a successor judge has been elected or appointed, the majority of the judges of the courts the associate judge serves, including the successor judge, vote to terminate that employment as provided by Subsection (b).

(h) Notwithstanding the powers of an associate judge provided by Section 54A.209 ~~[54.610]~~, an associate judge whose employment continues as provided by Subsection (e), (f), or (g) after the judge of a court served by the associate judge vacates the judge's office may perform administrative functions with respect to that court, but may not perform any judicial function, including any power prescribed by Section 54A.209 ~~[54.610]~~, with respect to that court until a successor judge is appointed or elected.

Sec. 54A.207 ~~[54.608]~~. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a court may refer to an associate judge any aspect of a suit over which the probate court has jurisdiction, including any matter ancillary to the suit.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

Sec. 54A.2071 ~~[54.606]~~. OATH. An associate judge must take the constitutional oath of office required of appointed officers of this state.

~~[Sec. 54.607. MAGISTRATE. An associate judge appointed under this subchapter is a magistrate.]~~

Sec. 54A.208 ~~[54.609]~~. METHODS ~~[ORDER]~~ OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order ~~[In referring a case to an associate judge, the judge of the referring court shall render:~~

~~[(1) an individual order of referral; or~~

~~[(2) a general order of referral]~~ specifying the class and type of cases to be referred ~~[heard by the associate judge].~~

(b) The order of referral may limit the power or duties of an associate judge.

Sec. 54A.209 ~~[54.610]~~. POWERS OF ASSOCIATE JUDGE. (a) Except as limited by an order of referral, an associate judge may:

- (1) conduct a hearing;
  - (2) hear evidence;
  - (3) compel production of relevant evidence;
  - (4) rule on the admissibility of evidence;
  - (5) issue a summons for the appearance of witnesses;
  - (6) examine a witness;
  - (7) swear a witness for a hearing;
  - (8) make findings of fact on evidence;
  - (9) formulate conclusions of law;
  - (10) rule on pretrial motions;
  - (11) recommend the rulings, orders, or judgment ~~[an order]~~ to be made ~~[rendered]~~ in a case;
  - (12) ~~[(11)]~~ regulate all proceedings in a hearing before the associate judge;
  - (13) ~~[(12)]~~ take action as necessary and proper for the efficient performance of the ~~[associate judge's]~~ duties required by the order of referral;
  - (14) ~~[(13)]~~ order the attachment of a witness or party who fails to obey a subpoena;
  - (15) ~~[(14)]~~ order the detention of a witness or party found guilty of contempt, pending approval by the referring court as provided by Section 54A.214 ~~[54.616]~~;
  - (16) ~~[(15)]~~ without prejudice to the right to a de novo hearing under Section 54A.216 ~~[54.618]~~, render and sign:
    - (A) a final order agreed to in writing as to both form and substance by all parties;
    - (B) a final default order;
    - (C) a temporary order;
    - (D) a final order in a case in which a party files an unrevoked waiver made in accordance with Rule 119, Texas Rules of Civil Procedure, that waives notice to the party of the final hearing or waives the party's appearance at the final hearing;
    - (E) an order specifying that the court clerk shall issue:
      - (i) letters testamentary or of administration; or
      - (ii) letters of guardianship; or
    - (F) an order for inpatient or outpatient mental health, mental retardation, or chemical dependency services or an order authorizing psychoactive medications; and
  - (17) ~~[(16)]~~ sign a final order that includes a waiver of the right to a de novo hearing in accordance with Section 54A.216 ~~[54.618]~~.
- (b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.
- (c) An order described by Subsection (a)(16) ~~[(a)(15)]~~ that is rendered and signed by an associate judge constitutes an order of the referring court. The judge of the referring court shall sign the order not later than the 30th day after the date the associate judge signs the order.
- (d) An answer filed by or on behalf of a party who previously filed a waiver described in Subsection (a)(16)(D) ~~[(a)(15)(D)]~~ revokes that waiver.

Sec. 54A.2091 [~~54.611~~]. ATTENDANCE OF BAILIFF. A bailiff shall attend a hearing conducted by an associate judge if directed to attend by the referring court.

~~[Sec. 54.612. COURT REPORTER. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter unless required by other law. A court reporter is required to be provided when the associate judge presides over a jury trial.~~

~~[(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing, if one is not otherwise provided.~~

~~[(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the referring court.~~

~~[(d) The referring court or associate judge may impose on a party the expense of preserving the record as a court cost.~~

~~[(e) On a request for a de novo hearing, the referring court may consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented under Section 54.618.]~~

Sec. 54A.210 [~~54.613~~]. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure ~~[who:~~

~~[(1) fails] to appear [before an associate judge] after being summoned or whose refusal to answer questions has been certified to the court[; or~~

~~[(2) improperly refuses to answer a question if the refusal has been certified to the court by the associate judge].~~

Sec. 54A.211. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record as court costs.

(e) On appeal of the associate judge's report or proposed order, the referring court may consider testimony or other evidence in the record if the record is taken by a court reporter.

Sec. 54A.212 [~~54.614~~]. REPORT. (a) The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order.

(b) The associate judge shall prepare a [written] report in the form directed by the referring court, including in the form of:

- (1) a notation on the referring court's docket sheet or in the court's jacket; or
- (2) a proposed order.



(c) ~~[(b)]~~ After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(d) ~~[(e)]~~ Notice may be given to the parties:

(1) in open court, by an oral statement, or by providing a copy of the associate judge's written report, including any proposed order;

(2) by certified mail, return receipt requested; or

(3) by facsimile transmission.

(e) ~~[(d)]~~ There is a rebuttable presumption that notice is received on the date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile transmission.

(f) ~~[(e)]~~ After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

Sec. 54A.213 ~~[54.615]~~. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE REFERRING COURT. (a) An associate judge shall give all parties notice of the right to a de novo hearing before the referring court.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right to a de novo hearing before the referring court in writing or on the record.

Sec. 54A.214 ~~[54.616]~~. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, the decisions and recommendations of the associate judge or a proposed order or judgment of the associate judge has the full force and effect, and is enforceable as, an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) Except as provided by Section 54A.209(c) ~~[54.610(e)]~~, if a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the decisions and recommendations of the associate judge or the proposed order or judgment of the associate judge becomes the order or judgment of the referring court at the time the judge of the referring court signs the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 54A.216, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 54A.215 [~~54.617~~]. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. (a) Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear further evidence; or

(3) recommit the matter to the associate judge for further proceedings.

(b) The judge of the referring court shall sign a proposed order or judgment the court adopts as provided by Subsection (a)(1) not later than the 30th day after the date the associate judge signed the order or judgment.

Sec. 54A.216 [~~54.618~~]. DE NOVO HEARING BEFORE REFERRING COURT. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 54A.212 [~~54.614~~].

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(d) Notice of a request for a de novo hearing before the referring court must be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(e) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date of filing of the initial request.

(f) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date on which the initial request for a de novo hearing was filed with the clerk of the referring court[~~, unless all of the parties agree to a later date~~].

(g) Before the start of a hearing conducted by an associate judge, the parties may waive the right of a de novo hearing before the referring court. The waiver may be in writing or on the record.

(h) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, motion for judgment notwithstanding the verdict, or other post-trial motion.

(i) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 54A.217 [~~54.619~~]. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date the judge of a referring court signs an order or judgment is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an order described by Section 54A.209(a)(16) ~~[54.610(a)(15)]~~ is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

~~[Sec. 54.620. IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a probate judge. All existing immunity granted an associate judge by law, express or implied, continues in full force and effect.]~~

SECTION 5.03. Chapter 201, Family Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. ASSOCIATE JUDGE FOR JUVENILE MATTERS

Sec. 201.301. APPLICABILITY. This subchapter applies only to an associate judge appointed under this subchapter and does not apply to a juvenile court master appointed under Subchapter K, Chapter 54, Government Code.

Sec. 201.302. APPOINTMENT. (a) A judge of a court that is designated as a juvenile court may appoint a full-time or part-time associate judge to perform the duties authorized by this chapter if the commissioners court of a county in which the court has jurisdiction has authorized creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county has been designated as a juvenile court, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 201.303. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;  
(2) have been licensed to practice law in this state for at least four years;  
(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022, Government Code, and before final disposition of the proceedings.

Sec. 201.304. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 201.305. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts which the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the associate judge's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the associate judge's employment ends.

Sec. 201.306. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a juvenile court may refer to an associate judge any aspect of a juvenile matter brought:

- (1) under this title or Title 3; or
- (2) in connection with Rule 308, Texas Rules of Civil Procedure.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

(d) The requirements of Subsections (b) and (c) apply when a judge has authority to refer the trial of a suit under this title, Title 1, or Title 4 to an associate judge, master, or other assistant judge regardless of whether the assistant judge is appointed under this subchapter.

Sec. 201.307. METHODS OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order.

(b) The order of referral may limit the power or duties of an associate judge.

Sec. 201.308. POWERS OF ASSOCIATE JUDGE. (a) Except as limited by an order of referral, an associate judge may:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for:
  - (A) the appearance of witnesses; and

(B) the appearance of a parent who has failed to appear before an agency authorized to conduct an investigation of an allegation of abuse or neglect of a child after receiving proper notice;

(6) examine a witness;

(7) swear a witness for a hearing;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) recommend an order to be rendered in a case;

(11) regulate proceedings in a hearing;

(12) order the attachment of a witness or party who fails to obey a subpoena;

(13) order the detention of a witness or party found guilty of contempt, pending approval by the referring court; and

(14) take action as necessary and proper for the efficient performance of the associate judge's duties.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 201.309. REFEREES. (a) An associate judge appointed under this subchapter may serve as a referee as provided by Sections 51.04(g) and 54.10.

(b) A referee appointed under Section 51.04(g) may be appointed to serve as an associate judge under this subchapter.

Sec. 201.310. ATTENDANCE OF BAILIFF. A bailiff may attend a hearing by an associate judge if directed by the referring court.

Sec. 201.311. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

(1) failed to appear before an associate judge after being summoned; or

(2) improperly refused to answer questions if the refusal has been certified to the court by the associate judge.

Sec. 201.312. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial or a contested final termination hearing.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record as costs.

(e) On a request for a de novo hearing, the referring court may consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented under Section 201.317.

Sec. 201.313. REPORT. (a) The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order. The associate judge's report must be in writing and in the form directed by the referring court.

(b) After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(c) Notice may be given to the parties:

(1) in open court, by an oral statement or by providing a copy of the associate judge's written report, including any proposed order;

(2) by certified mail, return receipt requested; or

(3) by facsimile.

(d) A rebuttable presumption exists that notice is received on the date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile.

(e) After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

Sec. 201.314. NOTICE OF RIGHT TO DE NOVO HEARING; WAIVER. (a) An associate judge shall give all parties notice of the right to a de novo hearing to the judge of the referring court.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right of a de novo hearing before the referring court in writing or on the record.

Sec. 201.315. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 201.317, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 201.316. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear additional evidence; or

(3) recommit the matter to the associate judge for further proceedings.

Sec. 201.317. DE NOVO HEARING. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 201.313.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(d) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date the initial request was filed.

(e) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date the initial request for a de novo hearing was filed with the clerk of the referring court.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(g) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, a motion for judgment notwithstanding the verdict, or other posttrial motions.

(h) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 201.318. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order or a default order is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 201.319. JUDICIAL IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a district judge.

Sec. 201.320. VISITING ASSOCIATE JUDGE. (a) If an associate judge appointed under this subchapter is temporarily unable to perform the judge's official duties because of absence or illness, injury, or other disability, a judge of a court having jurisdiction of a suit under this title or Title 1 or 4 may appoint a visiting associate judge to perform the duties of the associate judge during the period of the associate judge's absence or disability if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a visiting associate judge.

(b) To be eligible for appointment under this section, a person must have served as an associate judge for at least two years.

(c) Sections 201.001 through 201.017 apply to a visiting associate judge appointed under this section.

SECTION 5.04. Section 22.110(b), Government Code, is amended to read as follows:

(b) The court of criminal appeals shall adopt the rules necessary to accomplish the purposes of this section. The rules must require each district judge, judge of a statutory county court, associate judge appointed under Chapter 54A [~~54~~] of this code or Chapter 201, Family Code, master, referee, and magistrate to complete at least 12 hours of the training within the judge's first term of office or the judicial officer's first four years of service and provide a method for certification of completion of that training. At least four hours of the training must be dedicated to issues related to child abuse and neglect and must cover at least two of the topics described in Subsections (d)(8)-(12). At least six hours of the training must be dedicated to the training described by Subsections (d)(5), (6), and (7). The rules must require each judge and judicial officer to complete an additional five hours of training during each additional term in office or four years of service. At least two hours of the additional training must be dedicated to issues related to child abuse and neglect. The rules must exempt from the training requirement of this subsection each judge or judicial officer who files an affidavit stating that the judge or judicial officer does not hear any cases involving family violence, sexual assault, or child abuse and neglect.

SECTION 5.05. (a) Section 101.0611, Government Code, is amended to read as follows:

Sec. 101.0611. DISTRICT COURT FEES AND COSTS: GOVERNMENT CODE. The clerk of a district court shall collect fees and costs under the Government Code as follows:

(1) appellate judicial system filing fees for:

(A) First or Fourteenth Court of Appeals District (Sec. 22.2021, Government Code) . . . not more than \$5;

(B) Second Court of Appeals District (Sec. 22.2031, Government Code) . . . not more than \$5;

(C) Third Court of Appeals District (Sec. 22.2041, Government Code) . . . \$5;

(D) Fourth Court of Appeals District (Sec. 22.2051, Government Code) . . . not more than \$5;

(E) Fifth Court of Appeals District (Sec. 22.2061, Government Code) . . . not more than \$5;



- (E-1) Sixth Court of Appeals District (Sec. 22.2071, Government Code)  
... \$5;
- (E-2) Seventh Court of Appeals District (Sec. 22.2081, Government Code) ... \$5;
- (F) Ninth Court of Appeals District (Sec. 22.2101, Government Code)  
... \$5;
- (G) Eleventh Court of Appeals District (Sec. 22.2121, Government Code) ... \$5;
- (G-1) Twelfth Court of Appeals District (Sec. 22.2131, Government Code) ... \$5; and
- (H) Thirteenth Court of Appeals District (Sec. 22.2141, Government Code) ... not more than \$5;
- (2) when administering a case for the Rockwall County Court at Law (Sec. 25.2012, Government Code) ... civil fees and court costs as if the case had been filed in district court;
- (3) additional filing fees:
- (A) for each suit filed for insurance contingency fund, if authorized by the county commissioners court (Sec. 51.302, Government Code) ... not to exceed \$5;
- (B) to fund the improvement of Dallas County civil court facilities, if authorized by the county commissioners court (Sec. 51.705, Government Code) ... not more than \$15;
- (B-1) to fund the improvement of Bexar County court facilities, if authorized by the county commissioners court (Sec. 51.706, Government Code) ... not more than \$15; ~~and~~
- (C) to fund the improvement of Hays County court facilities, if authorized by the county commissioners court (Sec. 51.707, Government Code) ... not more than \$15; and
- (D) to fund the preservation of court records (Sec. 51.708, Government Code) ... not more than \$10;
- (4) for filing a suit, including an appeal from an inferior court:
- (A) for a suit with 10 or fewer plaintiffs (Sec. 51.317, Government Code) ... \$50;
- (B) for a suit with at least 11 but not more than 25 plaintiffs (Sec. 51.317, Government Code) ... \$75;
- (C) for a suit with at least 26 but not more than 100 plaintiffs (Sec. 51.317, Government Code) ... \$100;
- (D) for a suit with at least 101 but not more than 500 plaintiffs (Sec. 51.317, Government Code) ... \$125;
- (E) for a suit with at least 501 but not more than 1,000 plaintiffs (Sec. 51.317, Government Code) ... \$150; or
- (F) for a suit with more than 1,000 plaintiffs (Sec. 51.317, Government Code) ... \$200;
- (5) for filing a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition (Sec. 51.317, Government Code) ... \$15;

(6) for issuing a citation or other writ or process not otherwise provided for, including one copy, when requested at the time a suit or action is filed (Sec. 51.317, Government Code) . . . \$8;

(7) for records management and preservation (Sec. 51.317, Government Code) . . . \$10;

(7-a) for district court records archiving, if adopted by the county commissioners court (Sec. 51.317(b)(5), Government Code) . . . not more than \$5;

(8) for issuing a subpoena, including one copy (Sec. 51.318, Government Code) . . . \$8;

(9) for issuing a citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, or writ of sequestration not provided for in Section 51.317, or any other writ or process not otherwise provided for, including one copy if required by law (Sec. 51.318, Government Code) . . . \$8;

(10) for searching files or records to locate a cause when the docket number is not provided (Sec. 51.318, Government Code) . . . \$5;

(11) for searching files or records to ascertain the existence of an instrument or record in the district clerk's office (Sec. 51.318, Government Code) . . . \$5;

(12) for abstracting a judgment (Sec. 51.318, Government Code) . . . \$8;

(13) for approving a bond (Sec. 51.318, Government Code) . . . \$4;

(14) for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page (Sec. 51.318, Government Code) . . . \$1;

(15) for a noncertified copy, for each page or part of a page (Sec. 51.318, Government Code) . . . not to exceed \$1;

(16) fee for performing a service:

(A) related to the matter of the estate of a deceased person (Sec. 51.319, Government Code) . . . the same fee allowed the county clerk for those services;

(B) related to the matter of a minor (Sec. 51.319, Government Code) . . . the same fee allowed the county clerk for the service;

(C) of serving process by certified or registered mail (Sec. 51.319, Government Code) . . . the same fee a sheriff or constable is authorized to charge for the service under Section 118.131, Local Government Code; and

(D) prescribed or authorized by law but for which no fee is set (Sec. 51.319, Government Code) . . . a reasonable fee;

(17) jury fee (Sec. 51.604, Government Code) . . . \$30; and

(18) additional filing fee for family protection on filing a suit for dissolution of a marriage under Chapter 6, Family Code (Sec. 51.961, Government Code) . . . not to exceed \$15[;

~~[(19) at a hearing held by an associate judge in Dallas County, a court cost to preserve the record, in the absence of a court reporter, by other means (Sec. 54.509, Government Code) . . . as assessed by the referring court or associate judge; and~~

~~[(20) at a hearing held by an associate judge in Duval County, a court cost to preserve the record (Sec. 54.1151, Government Code) . . . as imposed by the referring court or associate judge].~~

(b) Sections 101.06111, 101.06113, 101.06114, 101.06115, 101.06116, and 101.06117, Government Code, are repealed.

SECTION 5.06. Section 602.002, Government Code, is amended to read as follows:

Sec. 602.002. OATH MADE IN TEXAS. An oath made in this state may be administered and a certificate of the fact given by:

(1) a judge, retired judge, or clerk of a municipal court;  
(2) a judge, retired judge, senior judge, clerk, or commissioner of a court of record;  
(3) a justice of the peace or a clerk of a justice court;  
(4) an associate judge, magistrate, master, referee, or criminal law hearing officer;

(5) a notary public;  
(6) ~~(5)~~ a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;

(7) ~~(6)~~ a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;

(8) ~~(7)~~ a county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;

(9) ~~(8)~~ the secretary of state or a former secretary of state;

(10) ~~(9)~~ an employee of a personal bond office, or an employee of a county, who is employed to obtain information required to be obtained under oath if the oath is required or authorized by Article 17.04 or by Article 26.04(n) or (o), Code of Criminal Procedure;

(11) ~~(10)~~ the lieutenant governor or a former lieutenant governor;

(12) ~~(11)~~ the speaker of the house of representatives or a former speaker of the house of representatives;

(13) ~~(12)~~ the governor or a former governor;

(14) ~~(13)~~ a legislator or retired legislator;

(15) ~~(14)~~ the attorney general or a former attorney general;

(16) ~~(15)~~ the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or

(17) ~~(16)~~ a peace officer described by Article 2.12, Code of Criminal Procedure, if:

(A) the oath is administered when the officer is engaged in the performance of the officer's duties; and

(B) the administration of the oath relates to the officer's duties.

SECTION 5.07. Article 2.09, Code of Criminal Procedure, is amended to read as follows:

Art. 2.09. WHO ARE MAGISTRATES. Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to

criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates or associate judges appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the associate judges [~~masters~~] appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the associate judges [~~magistrates~~] appointed by the judges of the district courts and the statutory county courts of Brazos County, Nueces County, or Williamson County, the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the criminal magistrates appointed by the Brazoria County Commissioners Court, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under [~~Subchapter G,~~] Chapter 54A [~~54~~], Government Code, the associate judges appointed by the judge of a district court under Chapter 54A [~~Subchapter H, Chapter 54~~], Government Code, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

SECTION 5.08. Article 102.017(d), Code of Criminal Procedure, is amended to read as follows:

(d) Except as provided by Subsection (d-2), the clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to the county or municipal treasurer, as appropriate, for deposit in a fund to be known as the courthouse security fund or a fund to be known as the municipal court building security fund, as appropriate. Money deposited in a courthouse security fund may be used only for security personnel, services, and items related to buildings that house the operations of district, county, or justice courts, and money deposited in a municipal court building security fund may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts. For purposes of this subsection, operations of a district, county, or justice court include the activities of associate judges, masters, magistrates, referees, hearing officers, criminal law magistrate court judges, and masters in chancery appointed under:

- (1) Section 61.311, Alcoholic Beverage Code;
- (2) Section 51.04(g) or Chapter 201, Family Code;
- (3) Section 574.0085, Health and Safety Code;
- (4) Section 33.71, Tax Code;
- (5) Chapter 54A [~~Chapter 54~~], Government Code; or
- (6) Rule 171, Texas Rules of Civil Procedure.

SECTION 5.09. Section 54.10(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a hearing under Section 54.03, 54.04, or 54.05, including a jury trial, a hearing under Chapter 55, including a jury trial, or a hearing under the Interstate Compact for Juveniles (Chapter 60) may be held by a referee appointed in accordance with Section 51.04(g) or an associate judge [~~a master~~] appointed under Chapter 54A [~~54~~], Government Code, provided:

(1) the parties have been informed by the referee or associate judge [~~master~~] that they are entitled to have the hearing before the juvenile court judge; and

(2) after each party is given an opportunity to object, no party objects to holding the hearing before the referee or associate judge [~~master~~].

SECTION 5.10. A magistrate, master, referee, associate judge, or hearing officer appointed as provided by Subchapters A, B, C, E, F, I, O, P, S, T, U, V, X, CC, FF, and II, Chapter 54, Government Code, before the effective date of this Act, continues to serve as an associate judge under Chapter 54A, Government Code, as added by this article, with the powers and duties provided by that chapter, provided the court for which the magistrate, master, referee, associate judge, or hearing officer serves has authority to appoint an associate judge under Chapter 54A, Government Code.

SECTION 5.11. The changes in law made by this article apply to a matter referred to an associate judge on or after the effective date of this article. A matter referred to an associate judge before the effective date of this article is governed by the law in effect on the date the matter was referred to the associate judge, and the former law is continued in effect for that purpose.

SECTION 5.12. The following subchapters of Chapter 54, Government Code, are repealed:

- (1) Subchapter A;
- (2) Subchapter B;
- (3) Subchapter C;
- (4) Subchapter E;
- (5) Subchapter F;
- (6) Subchapter I;
- (7) Subchapter O;
- (8) Subchapter P;
- (9) Subchapter S;
- (10) Subchapter T;
- (11) Subchapter U;
- (12) Subchapter V;
- (13) Subchapter X;
- (14) Subchapter CC;
- (15) Subchapter FF; and
- (16) Subchapter II.

#### ARTICLE 6. COURT ADMINISTRATION

SECTION 6.01. Section 74.005, Government Code, is amended to read as follows:

Sec. 74.005. APPOINTMENT OF [REGIONAL] PRESIDING JUDGES OF ADMINISTRATIVE JUDICIAL REGIONS. (a) The governor, with the advice and consent of the senate, shall appoint one judge in each administrative judicial region as presiding judge of the region.

(b) On the death, resignation, removal, or expiration of the term of office of a presiding judge, the governor immediately shall appoint or reappoint a presiding judge.

SECTION 6.02. Section 74.050, Government Code, is amended to read as follows:

Sec. 74.050. SUPPORT STAFF ~~[ADMINISTRATIVE ASSISTANT]~~. (a) The presiding judge may employ, directly or through a contract with another governmental entity, a full-time or part-time administrative assistant and a full-time or part-time staff attorney.

(a-1) A presiding judge may only employ a staff attorney under this section to the extent available funds are appropriated by the state.

~~(b) An administrative assistant [must have the qualifications established by rule of the supreme court.~~

~~[(c) An administrative assistant]~~ shall aid the presiding judge in carrying out the judge's duties under this chapter. The administrative assistant shall:

(1) perform the duties that are required by the presiding judge and by the rules of administration;

(2) conduct correspondence for the presiding judge;

(3) under the direction of the presiding judge, make an annual report of the activities of the administrative region and special reports as provided by the rules of administration to the supreme court, which shall be made in the manner directed by the supreme court; and

(4) attend to other matters that are prescribed by the council of judges.

(c) [(d)] An administrative assistant, with the approval of the presiding judge, may purchase the necessary office equipment, stamps, stationery, and supplies and employ additional personnel as authorized by the presiding judge.

(d) [(e)] An administrative assistant or staff attorney is entitled to receive the compensation from the state provided by the General Appropriations Act, from county funds, or from any public or private grant.

(e) A staff attorney may provide assistance to a district judge for a specific case at the direction of the judicial committee for additional resources.

(f) The office of court administration shall assist the presiding judges in:

(1) monitoring the compliance of staff attorneys with any job performance standards, uniform practices adopted by the presiding judges, and federal and state laws and policies;

(2) addressing the training needs and resource requirements of the staff attorneys;

(3) conducting annual performance evaluations for the staff attorneys based on written personnel performance standards adopted by the presiding judges; and

(4) receiving, investigating, and resolving complaints about particular staff attorneys based on a uniform process adopted by the presiding judges.

(g) Adequate quarters for a staff attorney hired as provided by this section shall be provided in a courthouse of the administrative judicial region.

SECTION 6.03. Section 74.093(c), Government Code, is amended to read as follows:

(c) The rules may provide for:

(1) the selection and authority of a presiding judge of the courts giving preference to a specified class of cases, such as civil, criminal, juvenile, or family law cases;

(2) other strategies for managing cases that require special judicial attention;

(3) a coordinated response for the transaction of essential judicial functions in the event of a disaster; and

(4) ~~(3)~~ any other matter necessary to carry out this chapter or to improve the administration and management of the court system and its auxiliary services.

SECTION 6.04. Chapter 74, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ADDITIONAL RESOURCES FOR CERTAIN CASES

Sec. 74.251. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to:

(1) a criminal matter;

(2) a case in which judicial review is sought under Subchapter G, Chapter 2001; or

(3) a case that has been transferred by the judicial panel on multidistrict litigation to a district court for consolidated or coordinated pretrial proceedings under Subchapter H.

Sec. 74.252. RULES TO GUIDE DETERMINATION OF WHETHER CASE REQUIRES ADDITIONAL RESOURCES. (a) The supreme court shall adopt rules under which courts, presiding judges of the administrative judicial regions, and the judicial committee for additional resources may determine whether a case requires additional resources to ensure efficient judicial management of the case.

(b) In developing the rules, the supreme court shall include considerations regarding whether a case involves or is likely to involve:

(1) a large number of parties who are separately represented by counsel;

(2) coordination with related actions pending in one or more courts in other counties of this state or in one or more United States district courts;

(3) numerous pretrial motions that present difficult or novel legal issues that will be time-consuming to resolve;

(4) a large number of witnesses or substantial documentary evidence;

(5) substantial postjudgment supervision;

(6) a trial that will last more than four weeks; and

(7) a substantial additional burden on the trial court's docket and the resources available to the trial court to hear the case.

Sec. 74.253. JUDICIAL DETERMINATION. (a) On the motion of a party in a case, or on the court's own motion, the judge of the court in which the case is pending shall review the case and determine whether, under rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management. The judge is not required to conduct an evidentiary hearing for purposes of making the determination but may, in the judge's discretion, direct the attorneys for the parties to the case and the parties to appear before the judge for a conference to provide information to assist the judge in making the determination.

(b) On determining that a case will require additional resources as provided by Subsection (a), the judge shall:

(1) notify the presiding judge of the administrative judicial region in which the court is located about the case; and

(2) request any specific additional resources that are needed, including the assignment of a judge under this chapter.

(c) If the presiding judge of the administrative judicial region agrees that, in accordance with the rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management, the presiding judge shall:

(1) use resources previously allotted to the presiding judge; or

(2) submit a request for specific additional resources to the judicial committee for additional resources.

Sec. 74.254. JUDICIAL COMMITTEE FOR ADDITIONAL RESOURCES.

(a) The judicial committee for additional resources is composed of:

(1) the chief justice of the supreme court; and

(2) the nine presiding judges of the administrative judicial regions.

(b) The chief justice of the supreme court serves as presiding officer. The office of court administration shall provide staff support to the committee.

(c) On receipt of a request for additional resources from a presiding judge of an administrative judicial region under Section 74.253, the committee shall determine whether the case that is the subject of the request requires additional resources in accordance with the rules adopted under Section 74.252. If the committee determines that the case does require additional resources, the committee shall make available the resources requested by the trial judge to the extent funds are available for those resources under the General Appropriations Act and to the extent the committee determines the requested resources are appropriate to the circumstances of the case.

(d) Subject to Subsections (c) and (f), additional resources the committee may make available under this section include:

(1) the assignment of an active or retired judge under this chapter, subject to the consent of the judge of the court in which the case for which the resources are provided is pending;

(2) additional legal, administrative, or clerical personnel;

(3) information and communication technology, including case management software, video conferencing, and specially designed courtroom presentation hardware or software to facilitate presentation of the evidence to the trier of fact;

(4) specialized continuing legal education;

(5) an associate judge;

(6) special accommodations or furnishings for the parties;

(7) other services or items determined necessary to try the case; and

(8) any other resources the committee considers appropriate.

(e) Notwithstanding any provision of Subchapter C, a justice or judge to whom Section 74.053(d) applies may not be assigned under Subsection (d).

(f) The judicial committee for additional resources may not provide additional resources under this subchapter in an amount that is more than the amount appropriated for this purpose.



Sec. 74.255. COST OF ADDITIONAL RESOURCES. The cost of additional resources provided for a case under this subchapter shall be paid by the state and may not be taxed against any party in the case for which the resources are provided or against the county in which the case is pending.

Sec. 74.256. NO STAY OR CONTINUANCE PENDING DETERMINATION. The filing of a motion under Section 74.253 in a case is not grounds for a stay or continuance of the proceedings in the case in the court in which the case is pending during the period the motion or request is being considered by:

- (1) the judge of that court;
- (2) the presiding judge of the administrative judicial region; or
- (3) the judicial committee for additional resources.

Sec. 74.257. APPELLATE REVIEW. A determination made by a trial court judge, the presiding judge of an administrative judicial region, or the judicial committee for additional resources under this subchapter is not appealable or subject to review by mandamus.

SECTION 6.05. (a) The Texas Supreme Court shall request the president of the State Bar of Texas to appoint a task force to consider and make recommendations regarding the rules for determining whether civil cases pending in trial courts require additional resources for efficient judicial management required by Section 74.252, Government Code, as added by this Act. The president of the State Bar of Texas shall ensure that the task force has diverse representation and includes judges of trial courts and attorneys licensed to practice law in this state who regularly appear in civil cases before courts in this state. The task force shall provide recommendations on the rules to the Texas Supreme Court not later than March 1, 2012.

(b) The Texas Supreme Court shall:

- (1) consider the recommendations of the task force provided as required by Subsection (a) of this section; and
- (2) adopt the rules required by Section 74.252, Government Code, as added by this Act, not later than May 1, 2012.

SECTION 6.06. The changes in law made by this article apply to cases pending on or after May 1, 2012.

## ARTICLE 7. GRANT PROGRAMS

SECTION 7.01. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.029 to read as follows:

Sec. 72.029. GRANTS FOR COURT SYSTEM ENHANCEMENTS. (a) The office shall develop and administer, except as provided by Subsection (c), a program to provide grants from available funds to counties for initiatives that will enhance their court systems or otherwise carry out the purposes of this chapter.

(b) To be eligible for a grant under this section, a county must:

- (1) use the grant money to implement initiatives that will enhance the county's court system, including grants to develop programs to more efficiently manage cases that require special judicial attention, or otherwise carry out the purposes of this chapter; and

(2) apply for the grant in accordance with procedures developed by the office and comply with any other requirements of the office.

(c) The judicial committee for additional resources shall determine whether to award a grant to a county that meets the eligibility requirements prescribed by Subsection (b).

(d) If the judicial committee for additional resources awards a grant to a county, the office shall:

(1) direct the comptroller to distribute the grant money to the county; and

(2) monitor the county's use of the grant money.

SECTION 7.02. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.017 to read as follows:

Sec. 22.017. GRANTS FOR CHILD PROTECTION. (a) In this section, "commission" means the Permanent Judicial Commission for Children, Youth and Families established by the supreme court.

(b) The commission shall develop and administer a program to provide grants from available funds for initiatives that will improve safety and permanency outcomes, enhance due process, or increase the timeliness of resolution in child protection cases.

(c) To be eligible for a grant under this section, a prospective recipient must:

(1) use the grant money to improve safety or permanency outcomes, enhance due process, or increase timeliness of resolution in child protection cases; and

(2) apply for the grant in accordance with procedures developed by the commission and comply with any other requirements of the supreme court.

(d) If the commission awards a grant, the commission shall:

(1) direct the comptroller to distribute the grant money; and

(2) monitor the use of the grant money.

#### ARTICLE 8. VEXATIOUS LITIGANTS

SECTION 8.01. Section 11.001(3), Civil Practice and Remedies Code, is amended to read as follows:

(3) "Local administrative judge" means a local administrative district judge, a local administrative statutory probate court judge, or a local administrative statutory county court judge.

SECTION 8.02. Section 11.101, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

SECTION 8.03. Section 11.102, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) A decision of a local administrative judge denying a litigant permission to file a litigation under Subsection (a), or conditioning permission to file a litigation on the furnishing of security under Subsection (b), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

SECTION 8.04. Section 11.103, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d), a [A] clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the local administrative judge permitting the filing.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102(c).

SECTION 8.05. Section 11.104, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website [maintain] a list of vexatious litigants subject to prefiling orders under Section 11.101 [and shall annually send the list to the clerks of the courts of this state]. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

SECTION 8.06. The posting, before the effective date of this article, of the name of a person designated a vexatious litigant under Chapter 11, Civil Practice and Remedies Code, on a list of vexatious litigants on the Internet website of the Office of Court Administration of the Texas Judicial System is not:

- (1) grounds for a cause of action;
- (2) a defense against a finding that a plaintiff is a vexatious litigant under Chapter 11, Civil Practice and Remedies Code; or
- (3) grounds for relief or appeal from a stay, order, or dismissal or any other action taken by a court or a clerk of a court under Chapter 11, Civil Practice and Remedies Code.

## ARTICLE 9. STUDY BY OFFICE OF COURT ADMINISTRATION OF TEXAS JUDICIAL SYSTEM

SECTION 9.01. In this article, "office of court administration" means the Office of Court Administration of the Texas Judicial System.

SECTION 9.02. (a) The office of court administration shall study the district courts and statutory county courts of this state to determine overlapping jurisdiction in civil cases in which the amount in controversy is more than \$200,000. The study must determine the feasibility, efficiency, and potential cost of converting to district courts those statutory county courts with jurisdiction in civil cases in which the amount in controversy is more than \$200,000.

(b) Not later than January 1, 2013, the office of court administration shall submit a report regarding the determinations made by the office relating to statutory county courts to the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and house of

representatives with primary jurisdiction over the judicial system, and the commissioners court of any county with a statutory county court with jurisdiction in civil cases in which the amount in controversy is more than \$200,000.

#### ARTICLE 10. NO APPROPRIATION; EFFECTIVE DATE

SECTION 10.01. This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

SECTION 10.02. Except as otherwise provided by this Act, this Act takes effect January 1, 2012.

#### Floor Amendment No. 1

Amend **CSSB 1717** (house committee printing) as follows:

(1) Strike SECTION 4.01 of the bill (page 46, line 22, through page 47, line 21) and substitute the following:

SECTION 4.01. (a) Section 27.005(a), Government Code, is amended to read as follows:

(a) For purposes of removal under Chapter 87, Local Government Code, "incompetency" in the case of a justice of the peace includes the failure of the justice to successfully complete:

(1) within one year after the date the justice is first elected, an 80-hour course in the performance of the justice's duties; and

(2) each following year, a 20-hour course in the performance of the justice's duties, including not less than 10 hours of instruction regarding substantive, procedural, and evidentiary law in civil matters.

(b) Section 27.005(a), Government Code, as amended by this section, applies to a justice of the peace serving on or after the effective date of this article, regardless of the date the justice was elected or appointed.

(2) Strike Section 6.02 of the bill (page 102, line 8, through page 104, line 5) and substitute the following:

SECTION 6.02. Section 74.050, Government Code, is amended to read as follows:

Sec. 74.050. SUPPORT STAFF ~~[ADMINISTRATIVE ASSISTANT]~~. (a) The presiding judge may employ, directly or through a contract with another governmental entity, a full-time or part-time administrative assistant.

(b) An administrative assistant ~~[must have the qualifications established by rule of the supreme court.]~~

~~[(c) An administrative assistant]~~ shall aid the presiding judge in carrying out the judge's duties under this chapter. The administrative assistant shall:

(1) perform the duties that are required by the presiding judge and by the rules of administration;

(2) conduct correspondence for the presiding judge;

(3) under the direction of the presiding judge, make an annual report of the activities of the administrative region and special reports as provided by the rules of administration to the supreme court, which shall be made in the manner directed by the supreme court; and

(4) attend to other matters that are prescribed by the council of judges.

(c) [(d)] An administrative assistant, with the approval of the presiding judge, may purchase the necessary office equipment, stamps, stationery, and supplies and employ additional personnel as authorized by the presiding judge.

(d) [(e)] An administrative assistant is entitled to receive the compensation from the state provided by the General Appropriations Act, from county funds, or from any public or private grant.

(3) In SECTION 7.01 of the bill, in added Section 72.029, Government Code (page 110, following line 27), add a new Subsection (e) to read as follows:

(e) The office may accept gifts, grants, and donations for purposes of this section. The office may not use state funds to provide a grant under this section or to administer the grant program.

(4) In SECTION 7.02 of the bill, in added Section 22.017, Government Code (page 111, between lines 21 and 22), add a new Subsection (e) to read as follows:

(e) The commission may accept gifts, grants, and donations for purposes of this section. The commission may not use state funds to provide a grant under this section or to administer the grant program.

(5) In SECTION 9.02 of the bill (page 114, between lines 23 and 24) add a new Subsection (c) to read as follows:

(c) The office of court administration may accept gifts, grants, and donations to conduct the study under this section. The office of court administration may not use state funds to conduct the study and, notwithstanding Subsection (a) of this section, is required to conduct the study only to the extent gifts, grants, and donations are available for that purpose.

## **Floor Amendment No. 2**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES accordingly:

ARTICLE \_\_\_\_ . SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

SECTION \_\_\_\_ .01. Section 263.601, Family Code, is amended by amending Subdivision (1) and adding Subdivision (3-a) to read as follows:

(1) "Foster care" means a voluntary residential living arrangement with a foster parent or other residential child-care provider that is:

(A) licensed or approved by the department or verified by a licensed child-placing agency; and

(B) paid under a contract with the department.

(3-a) "Trial independence period" means a period of not less than six months, or a longer period as a court may order not to exceed 12 months, during which a young adult exits foster care with the option to return to foster care under the continuing extended jurisdiction of the court.

SECTION \_\_\_\_ .02. Section 263.602, Family Code, is amended to read as follows:

Sec. 263.602. EXTENDED JURISDICTION. (a) A court that had continuing, exclusive jurisdiction over a young adult on the day before ~~[may, at]~~ the young adult's 18th birthday continues to have extended ~~[request, render an order that extends the~~

~~court's~~] jurisdiction over the young adult and shall retain the case on the court's docket while the young adult remains in extended foster care and during a trial independence period described ~~[as provided]~~ by this section ~~[subchapter]~~.

(b) A court with extended jurisdiction over a young adult who remains in extended foster care shall conduct extended foster care review hearings every six months for the purpose of reviewing and making findings regarding:

(1) whether the young adult's living arrangement is safe and appropriate and whether the department has made reasonable efforts to place the young adult in the least restrictive environment necessary to meet the young adult's needs;

(2) whether the department is making reasonable efforts to finalize the permanency plan that is in effect for the young adult, including a permanency plan for independent living;

(3) whether, for a young adult whose permanency plan is independent living:

(A) the young adult participated in the development of the plan of service;

(B) the young adult's plan of service reflects the independent living skills and appropriate services needed to achieve independence by the projected date; and

(C) the young adult continues to make reasonable progress in developing the skills needed to achieve independence by the projected date; and

(4) whether additional services that the department is authorized to provide are needed to meet the needs of the young adult ~~[The extended jurisdiction of the court terminates on the earlier of:~~

~~(1) the young adult's 21st birthday; or~~

~~(2) the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court].~~

(c) Not later than the 10th day before the date set for a hearing under this section, the department shall file with the court a copy of the young adult's plan of service and a report that addresses the issues described by Subsection (b).

(d) Notice of an extended foster care review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to the following persons, each of whom has a right to present evidence and be heard at the hearing:

(1) the young adult who is the subject of the suit;

(2) the department;

(3) the foster parent with whom the young adult is placed and the administrator of a child-placing agency responsible for placing the young adult, if applicable;

(4) the director of the residential child-care facility or other approved provider with whom the young adult is placed, if applicable;

(5) each parent of the young adult whose parental rights have not been terminated and who is still actively involved in the life of the young adult;

(6) a legal guardian of the young adult, if applicable; and

(7) the young adult's attorney ad litem, guardian ad litem, and volunteer advocate, the appointment of which has not been previously dismissed by the court.

(e) If, after reviewing the young adult's plan of service and the report filed under Subsection (c), and any additional testimony and evidence presented at the review hearing, the court determines that the young adult is entitled to additional services, the court may order the department to take appropriate action to ensure that the young adult receives those services.

(f) A court with extended jurisdiction over a young adult as described in Subsection (a) shall continue to have jurisdiction over the young adult and shall retain the case on the court's docket until the earlier of:

(1) the last day of the:

(A) sixth month after the date the young adult leaves foster care; or

(B) 12th month after the date the young adult leaves foster care if specified in a court order, for the purpose of allowing the young adult to pursue a trial independence period; or

(2) the young adult's 21st birthday.

(g) A court with extended jurisdiction described by this section is not required to conduct periodic hearings for a young adult during a trial independence period and may not compel a young adult who has exited foster care to attend a court hearing.

SECTION \_\_\_\_ .03. Subchapter G, Chapter 263, Family Code, is amended by adding Section 263.6021 to read as follows:

Sec. 263.6021. VOLUNTARY EXTENDED JURISDICTION FOR YOUNG ADULT RECEIVING TRANSITIONAL LIVING SERVICES. (a) Notwithstanding Section 263.602, a court that had continuing, exclusive jurisdiction over a young adult on the day before the young adult's 18th birthday may, at the young adult's request, render an order that extends the court's jurisdiction beyond the end of a trial independence period if the young adult receives transitional living services from the department.

(b) The extended jurisdiction of the court under this section terminates on the earlier of:

(1) the young adult's 21st birthday; or

(2) the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court.

(c) At the request of a young adult who is receiving transitional living services from the department and who consents to voluntary extension of the court's jurisdiction under this section, the court may hold a hearing to review the services the young adult is receiving.

(d) Before a review hearing scheduled under this section, the department must file with the court a report summarizing the young adult's transitional living services plan, services being provided to the young adult under that plan, and the young adult's progress in achieving independence.

(e) If, after reviewing the report and any additional testimony and evidence presented at the hearing, the court determines that the young adult is entitled to additional services, the court may order the department to take appropriate action to ensure that the young adult receives those services.

SECTION \_\_\_\_ .04. Subsections (a) and (c), Section 263.603, Family Code, are amended to read as follows:

(a) Notwithstanding Section 263.6021 [~~263.602~~], if the court believes that a young adult may be incapacitated as defined by Section 601(14)(B), Texas Probate Code, the court may extend its jurisdiction on its own motion without the young adult's consent to allow the department to refer the young adult to the Department of Aging and Disability Services for guardianship services as required by Section 48.209, Human Resources Code.

(c) If the Department of Aging and Disability Services determines a guardianship is not appropriate, or the court with probate jurisdiction denies the application to appoint a guardian, the court under Subsection (a) may continue to extend its jurisdiction over the young adult only as provided by Section 263.602 or 263.6021.

SECTION \_\_\_\_\_.05. Section 263.609, Family Code, is repealed.

SECTION \_\_\_\_\_.06. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

### Floor Amendment No. 3

Amend **CSSB 1717** (house committee report) as follows:

(1) In the recital to SECTION 4.05 of the bill (page 49, line 12), between "by" and "adding", insert "amending Subsection (a) and".

(2) In SECTION 4.05 of the bill, before proposed Article 4.12(e), Code of Criminal Procedure (page 49, between lines 12 and 13), insert the following:

(a) Except as otherwise provided by this article, a misdemeanor case to be tried in justice court shall be tried:

(1) in the precinct in which the offense was committed;

(2) in the precinct in which the defendant or any of the defendants reside;

[or]

(3) with the written consent of the state and each defendant or the defendant's attorney, in any other precinct within the county; or

(4) if the offense was committed in a county with a population of 3.3 million or more, in any precinct in the county that is adjacent to the precinct in which the offense was committed.

(3) Add the following appropriately numbered SECTION to ARTICLE 4 of the bill and renumber the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Article 4.12(a), Code of Criminal Procedure, as amended by this article, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

### Floor Amendment No. 6

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:



## ARTICLE \_\_\_\_ . MANAGED ASSIGNED COUNSEL PROGRAMS

SECTION \_\_\_\_ .01. Article 26.04, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (f-1) to read as follows:

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(f-1) In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with guidelines established for the program.

SECTION \_\_\_\_ .02. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.047 to read as follows:

Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this article:

(1) "Governmental entity" has the meaning assigned by Article 26.044.

(2) "Managed assigned counsel program" or "program" means a program operated with public funds:

(A) by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court; and

(B) for the purpose of appointing counsel under Article 26.04 or Section 51.10, Family Code.

(b) The commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. In appointing an entity to operate a managed assigned counsel program under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify:

(1) the types of cases in which the program may appoint counsel under Article 26.04 or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; and

(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.

(c) The commissioners court or commissioners courts shall require a written plan of operation from an entity operating a program under this article. The plan of operation must include:

- (1) a budget for the program, including salaries;
- (2) a description of each personnel position, including the program's director;
- (3) the maximum allowable caseload for each attorney appointed by the program;
- (4) provisions for training personnel of the program and attorneys appointed under the program;
- (5) a description of anticipated overhead costs for the program;
- (6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;
- (7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; and
- (8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney that has not been waived by all affected clients.

(d) A program under this article must have a director. Unless the program uses a review committee appointed under Subsection (e), a program under this article must be directed by a person who:

- (1) is a member of the State Bar of Texas;
- (2) has practiced law for at least three years; and
- (3) has substantial experience in the practice of criminal law.

(e) The governmental entity, nonprofit corporation, or bar association appointed under Subsection (b) may appoint a review committee of three or more individuals to appoint attorneys to the program's public appointment list described by Subsection (f). Each member of the committee:

- (1) must meet the requirements described by Subsection (d);
- (2) may not be employed as a prosecutor; and
- (3) may not be included on or apply for inclusion on the public appointment list described by Subsection (f).

(f) The program's public appointment list from which an attorney is appointed must contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) and the Task Force on Indigent Defense; and
- (3) is approved by the program director or review committee, as applicable.

(g) A court may replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k).

(h) A managed assigned counsel program is entitled to receive funds for personnel costs and expenses incurred in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.

(i) A managed assigned counsel program may employ personnel and enter into contracts necessary to perform the program's duties as specified by the commissioners court or commissioners courts under this article.

SECTION \_\_\_\_ .03. Article 26.05(c), Code of Criminal Procedure, is amended to read as follows:

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, the director of the program, and the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

SECTION \_\_\_\_ .04. Section 71.001, Government Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal Procedure.

SECTION \_\_\_\_ .05. Section 71.060(a), Government Code, is amended to read as follows:

(a) The Task Force on Indigent Defense shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. The policies and standards may include:

(1) performance standards for counsel appointed to represent indigent defendants;

(2) qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including:

(A) qualifications commensurate with the seriousness of the nature of the proceeding;

(B) qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;

(C) successful completion of relevant continuing legal education programs approved by the council; and

(D) testing and certification standards;

(3) standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants;

(4) standards for determining whether a person accused of a crime or juvenile offense is indigent;

(5) policies and standards governing the organization and operation of an assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender consistent with recognized national policies and standards;

(7) standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards;

(8) standards governing the reasonable compensation of counsel appointed to represent indigent defendants;

(9) standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants;

(10) standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the supreme court;

(11) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code; ~~and~~

(12) policies and standards governing the organization and operation of a managed assigned counsel program consistent with nationally recognized policies and standards; and

(13) other policies and standards for providing indigent defense services as determined by the task force to be appropriate.

#### **Floor Amendment No. 7**

Amend **CSSB 1717** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_\_. STATE COSTS FOR ATTORNEYS AD LITEM AND GUARDIANS AD LITEM APPOINTED TO REPRESENT MINORS IN JUDICIAL BYPASS ABORTION PROCEEDINGS

SECTION \_\_\_\_\_.01. (a) Not later than December 1, 2011, the supreme court by rule shall establish procedures for the supreme court and each county court at law, court having probate jurisdiction, district court, and court of appeals in this state to conduct a financial audit to determine for the state fiscal year beginning September 1, 2011, the amount of state funds used to pay the costs of attorneys ad litem and guardians ad litem appointed to represent minors under Section 33.003 or 33.004, Family Code.

(b) In the procedures adopted under Subsection (a) of this section, the supreme court must require each state court to submit to the supreme court a report on the results of the financial audit conducted by the court not later than November 1, 2012.

(c) Not later than January 1, 2013, the supreme court shall submit to the lieutenant governor and the speaker of the house of representatives a report that summarizes the results of financial audits conducted in the state courts and includes the total amount of state funds used in the state fiscal year beginning September 1, 2011, to pay the costs of attorneys ad litem and guardians ad litem appointed to represent minors under Section 33.003 or 33.004, Family Code.

SECTION \_\_\_\_\_. Section 33.003(e), Family Code, is amended to read as follows:

(e) The court shall appoint a guardian ad litem for the minor. If the minor has not retained an attorney, the court shall appoint an attorney to represent the minor. ~~The [If the guardian ad litem is an attorney admitted to the practice of law in this state, the]~~ court may not appoint the guardian ad litem to serve as the minor's attorney. The court may not appoint the minor's attorney to be the guardian ad litem for the minor.

SECTION \_\_\_\_\_. The change in law made by this Act to Section 33.003(e), Family Code, applies only to an application for a court order authorizing a minor to consent to an abortion filed under Section 33.003, Family Code, as amended by this Act, on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and that law is continued in effect for that purpose.

### **Floor Amendment No. 8**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered SECTION to ARTICLE 1 of the bill and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION \_\_\_\_\_. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.018 to read as follows:

Sec. 22.018. PUBLIC INFORMATION REGARDING CERTAIN PETITIONS AND MOTIONS. (a) The supreme court shall adopt rules governing the collection of statistical information relating to applications and appeals granted under Sections 33.003(h) and 33.004(b), Family Code. The information collected by the supreme court must include:

(1) the number of judicial bypass cases in which the court appointed a guardian ad litem;

(2) the number of judicial bypass cases in which the court appointed counsel;

(3) whether or not the guardian ad litem and counsel are the same individual;

(4) the number of judicial bypass cases in which the judge issued an order authorizing an abortion without notification; and

(5) the number of judicial bypass cases in which the judge denied an order, the number of appeals filed as a result of a denial, the number of denials that were affirmed, and the number of denials that were reversed.

(b) The information collected under this section must be available to the public in aggregate form on an administrative judicial region basis, as determined by the court.

(c) Statistical information collected under this section may not include the minor's name or any other confidential information of the minor.

**Floor Amendment No. 9**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered SECTION to ARTICLE 6 of the bill and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION 6.\_\_\_\_. (a) Section 74.141, Government Code, is amended to read as follows:

Sec. 74.141. DEFENSE OF JUDGES. The attorney general shall defend a state district judge, a presiding judge of an administrative region, the presiding judge of the statutory probate courts, or an active, retired, or former judge assigned under this chapter in any action or suit in any court in which the judge is a defendant because of his office as judge if the judge requests the attorney general's assistance in the defense of the suit.

(b) Section 74.141, Government Code, as amended by this Act, applies to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

**Floor Amendment No. 10**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. COURT REPORTERS

SECTION \_\_\_\_\_.01. Section 52.047, Government Code, is amended by adding Subsection (h) to read as follows:

(h) A court reporter may not be required to file an official transcript of a trial before the 60th day after the date a notice of appeal is filed. To the extent this subsection conflicts with the Texas Rules of Appellate Procedure or other rules of procedure, this subsection controls. Notwithstanding Sections 22.003, 22.004, and 22.108, the supreme court or the court of criminal appeals may not amend or adopt a rule in conflict with this section. This subsection does not apply to an official transcript required for an accelerated appeal or an interlocutory appeal.

**Floor Amendment No. 12**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_\_. INMATE LITIGATION

SECTION \_\_\_\_\_.01. Section 14.002(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) This chapter applies only to an action, including an appeal or original proceeding, [a suit] brought by an inmate in a district, county, justice of the peace, or small claims court or an appellate court, including the supreme court or the court of criminal appeals, in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate.

SECTION \_\_\_\_ .02. Sections 14.004(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) An inmate who files an affidavit or unsworn declaration of inability to pay costs shall file a separate affidavit or declaration:

(1) identifying each action ~~[suit]~~, other than an action ~~[a suit]~~ under the Family Code, previously brought by the person and in which the person was not represented by an attorney, without regard to whether the person was an inmate at the time the action ~~[suit]~~ was brought; and

(2) describing each action ~~[suit]~~ that was previously brought by:

(A) stating the operative facts for which relief was sought;

(B) listing the case name, cause number, and the court in which the action ~~[suit]~~ was brought;

(C) identifying each party named in the action ~~[suit]~~; and

(D) stating the result of the action ~~[suit]~~, including whether the action or a claim that was a basis for the action ~~[suit]~~ was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

(b) If the affidavit or unsworn declaration filed under this section states that a previous action or claim ~~[suit]~~ was dismissed as frivolous or malicious, the affidavit or unsworn declaration must state the date of the final order affirming the dismissal.

SECTION \_\_\_\_ .03. Section 14.007(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) An order of a court under Section 14.006(a) shall include the costs described by Subsection (b) if the court finds that:

(1) the inmate has previously filed an action to which this chapter applies ~~[in a district, county, justice of the peace, or small claims court]~~; and

(2) a final order has been issued that affirms that the action was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

SECTION \_\_\_\_ .04. The change in law made by this article applies only to an action brought on or after the effective date of this Act. An action brought before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

### Floor Amendment No. 13

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE \_\_\_\_ . PROVISIONS RELATED TO EXEMPTING CERTAIN JUDICIAL OFFICERS FROM CERTAIN CONCEALED HANDGUN LICENSING REQUIREMENTS

SECTION \_\_\_\_ . Section 411.201(a)(1), Government Code, is amended to read as follows:

(1) "Active judicial officer" means:

(A) a person serving as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court; ~~[or]~~

(B) a federal judge who is a resident of this state; or

(C) a person appointed and serving as an associate judge under Chapter 201, Family Code.

SECTION \_\_\_\_\_. Section 46.15(a), Penal Code, is amended to read as follows:

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active judicial officer as defined by Section 411.201, Government Code, ~~[a judge or justice of a federal court, the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court]~~ who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that:

(A) verifies that the officer honorably retired after not less than 15 years of service as a commissioned officer; and

(B) is issued by a state or local law enforcement agency;

(6) a district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a concealed handgun under Chapter 411, Government Code; and



(B) engaged in escorting the judicial officer; or

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code.

SECTION \_\_\_\_\_. The change in law made by this article to Section 46.15, Penal Code, applies only to an offense committed on or after the effective date of this article. An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this article if any element of the offense occurred before that date.

SECTION \_\_\_\_\_. This article takes effect September 1, 2011.

### **Floor Amendment No. 15**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered SECTION to ARTICLE 1 of the bill and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION 1.\_\_\_\_\_. (a) Sections 22.201(b), (k), and (o), Government Code, are amended to read as follows:

(b) The First Court of Appeals District is composed of the counties of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, Walker, Waller, and Washington.

(k) The Tenth Court of Appeals District is composed of the counties of Bosque, Burleson, Brazos, Coryell, Ellis, Falls, Freestone, Hamilton, Hill, Johnson, Leon, Limestone, Madison, McLennan, Navarro, Robertson, and Somervell, ~~and Walker~~.

(o) The Fourteenth Court of Appeals District is composed of the counties of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, Walker, Waller, and Washington.

(b) Section 22.201, Government Code, as amended by this article, does not affect the jurisdiction on appeal of any case from a county that is transferred by this article to a different court of appeals district if the transcripts for the case were filed before September 1, 2011, in the appropriate court of appeals district.

### **Floor Amendment No. 16**

Amend **CSSB 1717** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. PROFESSIONAL PROSECUTORS

SECTION \_\_\_\_\_.01. Section 46.002, Government Code, is amended to read as follows:

Sec. 46.002. PROSECUTORS SUBJECT TO CHAPTER. This chapter applies to the state prosecuting attorney, all county prosecutors, and the following state prosecutors:

(1) the district attorneys for Kenedy and Kleberg Counties and for the 1st, 2nd, 8th, 9th, 12th, 18th, 21st, 23rd, 25th, 26th, 27th, 29th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 39th, 42nd, 43rd, 46th, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th, 66th, 69th, 70th, 76th, 81st, 83rd, 84th, 85th, 88th, 90th, 97th, 100th, 105th, 106th,

109th, 110th, 112th, 118th, 119th, 123rd, 142nd, 143rd, 145th, 156th, 159th, 173rd, 196th, 198th, 216th, 220th, 229th, 235th, 253rd, 258th, 259th, 266th, 268th, 271st, 286th, 287th, 329th, 344th, 349th, 355th, and 506th judicial districts;

(2) the criminal district attorneys for the counties of Anderson, Austin, Bastrop, Bexar, Bowie, Brazoria, Caldwell, Calhoun, Cass, Collin, Comal, Dallas, Deaf Smith, Denton, Eastland, Fannin, Galveston, Grayson, Gregg, Harrison, Hays, Hidalgo, Jasper, Jefferson, Kaufman, Lubbock, McLennan, Madison, Navarro, Newton, Panola, Polk, Randall, Rockwall, San Jacinto, Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Wichita, Wood, and Yoakum; and

(3) the county attorneys performing the duties of district attorneys in the counties of Andrews, Callahan, Cameron, Castro, Colorado, Crosby, Ellis, Falls, Freestone, Lamar, Lamb, Lampasas, Lee, Limestone, Marion, Milam, Morris, Ochiltree, Orange, Rains, Red River, Robertson, Rusk, Swisher, Terry, Webb, and Willacy.

SECTION \_\_\_\_\_.02. This article takes effect September 1, 2011.

### **Floor Amendment No. 17**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered SECTION to ARTICLE 3 of the bill and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION 3.\_\_\_\_. (a) Section 25.0453, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The judge of a statutory probate court may, unless a party objects, provide that a proceeding be recorded by a good quality electronic recording device instead of by a court reporter. A stenographic record of an electronically recorded proceeding is not required except on order of the judge or request of a party. If a recording device is used, the court reporter is not required to be present to certify the record. The judge may designate one or more persons to act as the court recorder and shall assign to a court recorder the duties and responsibilities necessary to act in that capacity.

(b) Section 25.0453(g), Government Code, as added by this article, applies only to a proceeding commenced on or after the effective date of this Act. A proceeding commenced before the effective date of this Act is covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

### **Floor Amendment No. 19**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately number ARTICLE and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE \_\_\_\_\_. APPLICATION OF FOREIGN LAWS

SECTION \_\_\_\_\_.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 148 to read as follows:

#### CHAPTER 148. APPLICATION OF FOREIGN LAWS; SELECTION OF FOREIGN FORUM

Sec. 148.001. DEFINITION. In this chapter, "foreign law" means a law, rule, or legal code of a jurisdiction outside of the states and territories of the United States.

Sec. 148.002. DECISION BASED ON FOREIGN LAW. A ruling or decision of a court, arbitrator, or administrative adjudicator on a matter arising under the Family Code may not be based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution or a statute of this state.

Sec. 148.003. CHOICE OF FOREIGN LAW OR FORUM IN CONTRACT. (a) A contract provision providing that a foreign law is to govern a dispute arising under the Family Code is void to the extent that the application of the foreign law to the dispute would violate a right guaranteed by the United States Constitution or the constitution of this state.

(b) A contract provision providing that the forum to resolve a dispute arising under the Family Code is located outside the states and territories of the United States is void if the foreign law that would be applied to the dispute in that forum would, as applied, violate a right guaranteed by the United States Constitution or the constitution of this state.

SECTION \_\_\_\_ .02. (a) Section 148.002, Civil Practice and Remedies Code, as added by this article, applies only to a ruling or decision that becomes final on or after the effective date of this Act. A ruling or decision that becomes final before the effective date of this Act and any appeal of that ruling or decision are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 148.003, Civil Practice and Remedies Code, as added by this article, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

### **Floor Amendment No. 20**

Amend Amendment No. 19 by Berman amending **CSSB 1717** as follows:

(1) In the SECTION of the amendment adding Section 148.002, Civil Practice and Remedies Code (page 1, line 16), between "violate a" and "right", insert "civil right or a".

(2) In the SECTION of the amendment adding Section 148.003(a), Civil Practice and Remedies Code (page 1, line 23), between "violate a" and "right", insert "civil right or a".

(3) In the SECTION of the amendment adding Section 148.003(b), Civil Practice and Remedies Code (page 1, line 29), between "violate a" and "right", insert "civil right or a".

### **Floor Amendment No. 22**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . VICTIM-OFFENDER MEDIATION

SECTION \_\_\_\_ .01. Section 1, Article 28.01, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

- (1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;
- (2) Pleadings of the defendant;
- (3) Special pleas, if any;
- (4) Exceptions to the form or substance of the indictment or information;
- (5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;
- (6) Motions to suppress evidence—When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;
- (7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury;
- (8) Discovery;
- (9) Entrapment; ~~and~~
- (10) Motion for appointment of interpreter; and
- (11) Motion to allow the defendant to enter a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56.

SECTION \_\_\_\_ .02. Chapter 56, Code of Criminal Procedure, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) The commissioners court of a county or governing body of a municipality may establish a pretrial victim-offender mediation program for persons who:

- (1) have been arrested for or charged with a misdemeanor under Title 7, Penal Code, in any court in this state other than a district court; and
- (2) have not previously been convicted of a felony or a misdemeanor, other than a misdemeanor regulating traffic and punishable by fine only.

(b) A county court, statutory county court, municipal court, or justice court that implements a program under this subchapter may adopt administrative rules as necessary or convenient to implement or operate the program, including additional criteria related to a defendant's eligibility to enter the program.

(c) The commissioners court of a county or governing body of a municipality that establishes a pretrial victim-offender mediation program under this subchapter may:

- (1) allow for the referral to the program of arrested persons who have not yet been indicted or otherwise formally charged; and

(2) adopt administrative procedures as necessary to implement and operate the program, including additional program requirements that have been approved by the attorney representing the state in the county or municipality, as applicable.

Art. 56.22. PROGRAM. (a) A pretrial victim-offender mediation program established under Article 56.21 is coordinated by the attorney representing the state and must require:

(1) the attorney representing the state:

(A) to identify defendants who are eligible to participate in the program, including a consideration by the attorney representing the state of whether the defendant meets any additional locally developed eligibility criteria; and

(B) to the extent feasible and using existing resources, to make available to complaining witnesses and victims in appropriate criminal cases information and literature indicating that a victim-offender mediation program may be available in a case if certain eligibility criteria are met by the defendant;

(2) the consent of the victim, the defendant, and the attorney representing the state to be obtained before the case may proceed to pretrial victim-offender mediation; and

(3) the defendant to enter into a binding mediation agreement in accordance with Article 56.24 that:

(A) includes an apology by the defendant; and

(B) requires the defendant to:

(i) pay restitution to the victim; or

(ii) perform community service.

(b) All communications made in a pretrial victim-offender mediation program are confidential and may not be introduced into evidence except in a proceeding involving a question concerning the meaning of a mediation agreement.

(c) A pretrial victim-offender mediation program may require the staff and other resources of pretrial services departments and community supervision correction departments to assist in monitoring the defendant's compliance with a mediation agreement reached through the program.

(d) A pretrial victim-offender mediation may be conducted by a court-appointed mediator who meets the training requirements provided by Sections 154.052(a) and (b), Civil Practice and Remedies Code, or by any other appropriate person designated by the court. Neither the attorney representing the state nor the attorney representing the defendant in the criminal action may serve as a mediator under the pretrial victim-offender mediation program.

(e) If a defendant enters a pretrial victim-offender mediation program, the court may defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. The court may not require the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

(f) The case must be returned to the docket and proceed through the regular criminal justice system if:

(1) a pretrial victim-offender mediation does not result in a mediation agreement; or

(2) the defendant fails to successfully fulfill the terms of the mediation agreement by the date specified in the mediation agreement.

(g) If a case is returned to the docket under Subsection (f), the defendant retains all of the rights that the defendant possessed before entering the pretrial victim-offender mediation program under this subchapter. Notwithstanding any other law, for purposes of determining the duration and expiration of an applicable statute of limitation under Chapter 12, the running of the period of limitation is tolled while the defendant is enrolled in a program under this subchapter.

(h) The court on the motion of the attorney representing the state shall dismiss the indictment or information charging the defendant with the commission of the offense, if the defendant:

(1) successfully completes the mediation agreement as determined by the attorney representing the state; and

(2) either:

(A) pays all court costs; or

(B) enters a payment plan approved by the court or the attorney representing the state for such payment.

(i) The attorney representing the state or the court may extend the initial compliance period granted to the defendant. A determination by the court regarding whether the mediation agreement has been successfully completed is final and may not be appealed.

(j) If the defendant is not arrested or convicted of a subsequent felony or misdemeanor other than a misdemeanor regulating traffic and punishable by fine only on or before the first anniversary of the date the defendant successfully completed a mediation agreement under this subchapter, on the motion of the defendant, the court shall enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the pretrial victim-offender mediation program.

Art. 56.23. MOTION AND HEARING. (a) The court on its own motion may, and on the motion of either party shall, hold a pretrial hearing to determine whether to allow an eligible defendant to enter a pretrial victim-offender mediation program under this subchapter.

(b) The court shall conduct a pretrial hearing under this article in accordance with Chapter 28 and the rules of evidence.

(c) At a pretrial hearing under this article, either party may present any evidence relevant to the defendant's eligibility under Article 56.22 and other additional locally developed eligibility criteria to enter a pretrial victim-offender mediation program.

Art. 56.24. MEDIATION AGREEMENT. (a) A mediation agreement under this subchapter must be:

(1) signed by the defendant and the victim; and

(2) ratified by the attorney representing the state in a request for a court order documenting and approving the mediation agreement.

(b) A mediation agreement under this subchapter may require testing, counseling, and treatment of the defendant to address alcohol abuse, abuse of controlled substances, mental health, or anger management or any other service that is reasonably related to the offense for which the defendant was arrested or charged.

(c) A mediation agreement under this subchapter is not valid for more than one year after the date on which the mediation agreement is ratified unless the court and the attorney representing the state approve the extension of the agreement.

(d) A mediation agreement under this subchapter does not constitute a plea or legal admission of responsibility.

Art. 56.25. OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of pretrial victim-offender mediation programs established under this subchapter.

(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a pretrial victim-offender mediation program established under this subchapter.

Art. 56.26. FEES. (a) A pretrial victim-offender mediation program established under this subchapter may collect from a defendant in the program:

(1) a reasonable program participation fee not to exceed \$500; and

(2) an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs of the testing, counseling, or treatment if such testing, counseling, or treatment is required by the mediation agreement.

(b) Fees collected under this article may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the pretrial victim-offender mediation program. The fees must be:

(1) based on the defendant's ability to pay; and

(2) used only for purposes specific to the program.

SECTION \_\_\_\_ .03. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0179 to read as follows:

Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER MEDIATION. (a) A defendant who participates in a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56, on successful completion of the terms of the defendant's mediation agreement or on conviction, shall pay as court costs \$15 plus an additional program participation fee as described by Article 56.26 in the amount prescribed by that article.

(b) The court clerk shall collect the costs imposed under this article. The clerk shall keep a separate record of any money collected under this article and shall pay any money collected to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to a treasurer, for deposit in a fund to be known as the county pretrial victim-offender mediation program fund or in a fund to be known as the municipal pretrial victim-offender mediation program fund, as appropriate.

(c) A county or municipality that collects court costs under this article shall use the money in a fund described by Subsection (b) exclusively for the maintenance of the pretrial victim-offender mediation program operated in the county or municipality.

SECTION \_\_\_\_ .04. Subchapter B, Chapter 102, Government Code, is amended by adding Section 102.0216 to read as follows:

Sec. 102.0216. ADDITIONAL COURT COSTS: CODE OF CRIMINAL PROCEDURE. A defendant who participates in a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56, Code of Criminal Procedure, shall pay on successful completion of the terms of the defendant's mediation agreement or on conviction, in addition to all other costs, to help fund pretrial victim-offender mediation programs established under that subchapter (Art. 102.0179, Code of Criminal Procedure) . . . \$15 plus an additional program participation fee in an amount not to exceed \$500.

SECTION \_\_\_\_\_.05. (a) The change in law made by this Act in adding Subchapter A-1, Chapter 56, Code of Criminal Procedure, applies to a defendant who enters a pretrial victim-offender mediation program under that subchapter regardless of whether the defendant committed the offense for which the defendant enters the program before, on, or after the effective date of this Act.

(b) The change in law made by this Act in adding Article 102.0179, Code of Criminal Procedure, and Section 102.0216, Government Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

#### **Floor Amendment No. 24**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE \_\_\_\_\_. PRETRIAL HEARINGS IN CRIMINAL CASES

SECTION \_\_\_\_\_.01. Article 28.01, Code of Criminal Procedure, is amended by adding Section 4 to read as follows:

Sec. 4. A court shall set a pre-trial hearing in a criminal case other than a case involving only an offense punishable as a Class C misdemeanor, if not later than the 60th day before the date on which trial commences, the state or the defendant requests the hearing. The court must:

(1) hold the requested hearing not later than the 30th day before the date on which trial commences; and

(2) to the extent feasible, rule at the hearing on all pre-trial motions filed in the case.

SECTION \_\_\_\_\_.02 The change in law made by this article applies only to a criminal case in which the indictment or information is presented to the court on or after the effective date of this Act. A criminal case in which the indictment or information is presented to the court before the effective date of this Act is governed by the law in effect when the indictment or information is presented, and the former law is continued in effect for that purpose.

#### **Floor Amendment No. 25**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:



## ARTICLE \_\_\_\_ . COURT COSTS

SECTION \_\_\_\_ . Subsection (b), Section 51.005, Government Code, is amended to read as follows:

(b) The fees are:

- (1) application for petition for review [~~writ of error~~] . . . . . \$ 50
- (2) additional fee if application for petition for review [~~writ of error~~] is granted . . . . . \$ 75
- (3) motion for leave to file petition for writ of mandamus, prohibition, injunction, and other similar proceedings originating in the supreme court . . . . . \$ 50
- (4) additional fee if a motion under Subdivision (3) is granted. . . . . \$ 75
- (5) certified question from a federal court of appeals to the supreme court \$ 75
- (6) case appealed to the supreme court from the district court by direct appeal . . . . . \$100
- (7) any other proceeding filed in the supreme court . . . . . \$ 75.

SECTION \_\_\_\_ . Subsection (a), Section 51.207, Government Code, is amended to read as follows:

(a) The clerk of a court of appeals shall collect the fees described in Subsection

(b) in a civil case before the court for the following services:

- (1) filing records, applications, motions, briefs, and other necessary and proper papers;
- (2) docketing and making docket and minute book entries;
- (3) issuing notices, citations, processes, and mandates;
- (4) preparing transcripts on application for petition for review [~~writ of error~~] to the supreme court; and
- (5) performing other necessary clerical duties.

SECTION \_\_\_\_ . Section 101.021, Government Code, is amended to read as follows:

Sec. 101.021. SUPREME COURT FEES AND COSTS: GOVERNMENT CODE. The clerk of the supreme court shall collect fees and costs as follows:

- (1) application for petition for review [~~writ of error~~] (Sec. 51.005, Government Code) . . . \$50;
- (2) additional fee if application for petition for review [~~writ of error~~] is granted (Sec. 51.005, Government Code) . . . \$75;
- (3) motion for leave to file petition for writ of mandamus, prohibition, injunction, and other similar proceedings originating in the supreme court (Sec. 51.005, Government Code) . . . \$50;
- (4) additional fee if a motion under Subdivision (3) is granted (Sec. 51.005, Government Code) . . . \$75;
- (5) certified question from a federal court of appeals to the supreme court (Sec. 51.005, Government Code) . . . \$75;
- (6) case appealed to the supreme court from the district court by direct appeal (Sec. 51.005, Government Code) . . . \$100;
- (7) any other proceeding filed in the supreme court (Sec. 51.005, Government Code) . . . \$75;

(8) administering an oath and giving a sealed certificate of the oath (Sec. 51.005, Government Code) . . . \$5;

(9) making certain copies, including certificate and seal (Sec. 51.005, Government Code) . . . \$5, or \$0.50 per page if more than 10 pages;

(10) any official service performed by the clerk for which a fee is not otherwise provided (Sec. 51.005, Government Code) . . . reasonable amount set by order or rule of supreme court;

(10-a) supreme court support account filing fee (Sec. 51.0051, Government Code) . . . amount set by the supreme court, not to exceed \$50;

(11) issuance of attorney's license or certificate (Sec. 51.006, Government Code) . . . \$10; and

(12) additional filing fee to fund civil legal services for the indigent (Sec. 51.941, Government Code) . . . \$25.

### **Floor Amendment No. 26**

Amend **CSSB 1717** (house committee printing) as follows:

(1) In ARTICLE 4 of the bill, add the following appropriately numbered SECTION to the ARTICLE and renumber the subsequent SECTIONS of the ARTICLE accordingly:

SECTION 4.\_\_\_\_. Section 102.104, Government Code, is repealed.

(2) Add the following appropriately numbered ARTICLE to the bill and renumber subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. REPEAL OF CERTAIN COURT COSTS

SECTION \_\_\_\_\_.01. The following provisions are repealed:

(1) Section 102.122, Government Code; and

(2) Section 545.412(b-1), Transportation Code.

### **Floor Amendment No. 27**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. CONFIDENTIALITY OF CERTAIN COURT RECORDS

SECTION \_\_\_\_\_.01. Chapter 44, Code of Criminal Procedure, is amended by adding Article 44.282 to read as follows:

Art. 44.282. RECORDS AND FILES RELATING TO CERTAIN CHILDREN.

(a) In this article, "child" has the meaning assigned by Section 51.02, Family Code.

(b) All records and files relating to a child who is appealing a conviction from a municipal court or a justice court for a misdemeanor offense punishable by a fine only, other than a traffic offense, are confidential during the pendency of the appeal and may not be disclosed except as provided by Article 45.0217(c).

(c) All records and files relating to a child whose conviction from a municipal court or a justice court for a misdemeanor offense punishable by a fine only, other than a traffic offense, was appealed are confidential following the disposition of the appeal and may not be disclosed except as provided by Article 45.0217(c):

(1) on satisfaction of the judgment, if the conviction is affirmed; or

(2) on reversal or remand of the conviction.

SECTION \_\_\_\_\_.02. Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.0217 to read as follows:

Art. 45.0217. CONFIDENTIALITY OF CERTAIN CONVICTION RECORDS AND FILES OF CHILDREN. (a) In this article, "child" has the meaning assigned by Section 51.02, Family Code.

(b) Except as provided by Subsection (c), on satisfaction of the judgment, all records and files relating to a child who is convicted of a misdemeanor offense punishable by a fine only, other than a traffic offense, including records and files held by a law enforcement agency, are confidential and may not be disclosed.

(c) Records and files relating to a child convicted of a misdemeanor offense punishable by a fine only, other than a traffic offense, may be disclosed to:

(1) a judge or magistrate, including the staff of a judge or magistrate;  
(2) the Department of Public Safety or another criminal justice agency, for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;

(3) the attorney for the child;

(4) the prosecuting attorney;

(5) the child and the child's parent, guardian, or managing conservator; and

(6) a person to whom information is required to be disclosed under Article

15.27.

SECTION \_\_\_\_\_.03. Section 411.0851(a), Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d) [~~or (f-1)~~].

SECTION \_\_\_\_\_.04. The heading to Section 552.142, Government Code, is amended to read as follows:

Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS [~~AND CERTAIN MISDEMEANORS PUNISHABLE BY FINE ONLY~~].

SECTION \_\_\_\_\_.05. Section 552.142(a), Government Code, is amended to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) [~~or (f-1)~~].

SECTION \_\_\_\_\_.06. Section 552.1425(a), Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d) [~~or (f-1)~~].

SECTION \_\_\_\_\_.07. Section 58.005, Family Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Subsection (a) [~~This section~~] does not apply to information collected under Section 58.104 or under Subchapter D-1.

(c) Except as provided by Article 45.0217(c), Code of Criminal Procedure, all records and files relating to a child who is convicted of a misdemeanor offense punishable by a fine only, other than a traffic offense, or is found to have engaged in conduct indicating a need for supervision that is described by Section 51.03(b)(1), are confidential and may not be disclosed:

(1) on satisfaction of the judgment, if the records and files relate to a child who is convicted of a misdemeanor offense punishable by a fine only, other than a traffic offense; or

(2) on completion of the terms of the disposition, if the records and files relate to a child found to have engaged in conduct indicating a need for supervision that is described by Section 51.03(b)(1).

SECTION \_\_\_\_\_.08. Sections 411.081(f-1) and (j), Government Code, are repealed.

SECTION \_\_\_\_\_.09. The changes in law made by this article apply to all records and files that exist on or after the effective date of this Act, regardless of when the conviction or the finding that is the subject of the records and files occurred or when the judgment contained in the records and files was satisfied or the terms of the disposition contained in the records and files was completed.

### **Floor Amendment No. 1 on Third Reading**

Amend Amendment No. 8 by Harnett, as added on second reading, to **CSSB 1717** on third reading by striking Subsection (c) (page 1, lines 29-30) and substituting the following:

(c) Statistical information collected under this section may not include:

(1) the name of the judge or court that issued the order;

(2) the minor's name; and

(3) any other confidential information of the minor.

The amendments were read.

Senator Duncan moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1717** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Harris, Huffman, Uresti, and Hinojosa.

**SENATE BILL 683 WITH HOUSE AMENDMENT**

Senator Huffman called **SB 683** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Floor Amendment No. 1**

Amend **SB 683** (house committee printing) by striking SECTION 3 of the bill and substituting:

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Huffman moved to concur in the House amendment to **SB 683**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 516 WITH HOUSE AMENDMENT**

Senator Patrick called **SB 516** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Floor Amendment No. 1 on Third Reading**

Amend **SB 516** on third reading as follows:

(1) In the recital to SECTION 2 of the bill (page 1, line 11), strike "(c) and (d)" and substitute "(c), (d), and (e)".

(2) In SECTION 2 of the bill, following added Section 11.131(d), Tax Code (page 2, between lines 14 and 15), add the following:

(e) A surviving spouse who qualifies for an exemption under Subsection (c) or (d) must apply for an exemption under that subsection each year the surviving spouse claims entitlement to the exemption as required by Sections 11.43(a) and (b).

(3) Add the following appropriately numbered SECTION to the bill and renumber the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 11.43(c), Tax Code, is amended to read as follows:

(c) An exemption provided by Section 11.13, 11.131(b) [~~11.131~~], 11.17, 11.18, 11.182, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(h), (j), or (j-1), 11.231, 11.254, 11.29, 11.30, or 11.31, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership or the person's qualification for the exemption changes. However, the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

The amendment was read.

Senator Patrick moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 516** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Patrick, Chair; Birdwell, Hinojosa, Nichols, and Huffman.

### **SENATE BILL 1788 WITH HOUSE AMENDMENTS**

Senator Patrick called **SB 1788** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 1788** by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. FISCAL MATTERS REGARDING FOUNDATION SCHOOL PROGRAM AND TAX INCREMENT FUND

SECTION \_\_\_\_\_.01. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2511 to read as follows:

Sec. 42.2511. FUNDING LEVELS BASED ON CERTAIN TAX INCREMENT FUND PAYMENTS. (a) This section applies only to a school district that:

(1) deposited taxes before May 1, 2011, in a tax increment fund created under Chapter 311, Tax Code, for a reinvestment zone plan; and

(2) received a notice from the commissioner of a reduction in state funding for the 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years based on the deposit of taxes into the tax increment fund that were reported to the commissioner by the district but not on the form used by the agency to calculate entitlements under this chapter.

(b) Notwithstanding any other law, the state and local revenue a school district subject to this section is entitled to receive for the state fiscal biennium beginning September 1, 2011, is reduced by one-half of the reduction calculated by the commissioner due to the taxes deposited in the tax increment fund for the 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years.

(c) This section expires September 1, 2013.

#### **Floor Amendment No. 2**

Amend **SB 1788** (house committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0111 to read as follows:

Sec. 29.0111. BEGINNING OF TRANSITION PLANNING. Appropriate state transition planning under the procedure adopted under Section 29.0111 must begin for a student not later than when the student reaches 14 years of age.

The amendments were read.

Senator Patrick moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1788** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Patrick, Chair; Huffman, Shapiro, Nelson, and West.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1732**

Senator Hinojosa called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1732** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1732** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Williams, Seliger, Whitmire, and Nelson.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 753**

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 753** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 753** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Deuell, Carona, Rodriguez, and Eltife.

**CONFERENCE COMMITTEE ON HOUSE BILL 2226**

Senator Carona called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2226** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2226** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Gallegos, Zaffirini, Nichols, and Eltife.

**CONFERENCE COMMITTEE ON HOUSE BILL 2560**

Senator Estes called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2560** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2560** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Estes, Chair; Huffman, Wentworth, Lucio, and Hegar.

**SENATE BILL 635 WITH HOUSE AMENDMENTS**

Senator Nichols called **SB 635** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 635** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED****AN ACT**

relating to the authority of the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.043(h), Water Code, is amended to read as follows:

(h) The commission or executive director may ~~[, on a motion by the executive director or by the appellant under Subsection (a), (b), or (f) of this section,]~~ establish interim rates to be in effect until a final decision is made in an appeal filed under Subsection (a), (b), or (f).

SECTION 2. Sections 13.187(b) and (l), Water Code, are amended to read as follows:



(b) A copy of the statement of intent shall be mailed or delivered to the appropriate offices of each affected municipality, to the executive director, and to any ~~[other]~~ affected persons as required by the regulatory authority's rules.

(l) At any time during the pendency of the rate proceeding the regulatory authority or, if the regulatory authority is the commission, the executive director may fix interim rates to remain in effect until a final determination is made on the proposed rate.

SECTION 3. Section 13.242(c), Water Code, is amended to read as follows:

(c) The commission may by rule allow a municipality or utility or water supply corporation to render retail water or sewer service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 ~~[of this code]~~ that it intends to provide retail water or sewer service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

SECTION 4. Section 13.248, Water Code, is amended to read as follows:

Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission or the executive director after public notice ~~[and hearing]~~, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 5. Section 49.321, Water Code, is amended to read as follows:

Sec. 49.321. DISSOLUTION AUTHORITY. After notice ~~[and hearing]~~, the commission or executive director may dissolve any district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

SECTION 6. Section 49.324, Water Code, is amended to read as follows:

Sec. 49.324. ORDER OF DISSOLUTION. The commission or the executive director may enter an order dissolving the district ~~[at the conclusion of the hearing]~~ if the commission or executive director ~~[it]~~ finds that the district has performed none of the functions for which it was created for a period of five consecutive years ~~[before the day of the proceeding]~~ and that the district has no outstanding bonded indebtedness.

SECTION 7. Section 49.326(a), Water Code, is amended to read as follows:

(a) Appeals from an ~~[a commission]~~ order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

SECTION 8. Section 54.030(b), Water Code, is amended to read as follows:

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that in its judgment, conversion into a municipal utility district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district. The resolution shall also request that the commission approve ~~[to hold a hearing on the question of]~~ the conversion of the district.

SECTION 9. Section 54.032, Water Code, is amended to read as follows:

Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Notice of the conversion ~~[hearing]~~ shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks ~~[with the first publication to be made not less than 14 full days before the time set for the hearing]~~.

(c) The notice shall:

(1) ~~[state the time and place of the hearing;~~

~~(2)]~~ set out the resolution adopted by the district in full; and

(2) ~~(3)]~~ notify all interested persons how they may offer comments ~~[to appear and offer testimony]~~ for or against the proposal contained in the resolution.

SECTION 10. Section 54.033, Water Code, is amended to read as follows:

Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) ~~If [After a hearing, if]~~ the commission or the executive director finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, the commission or executive director ~~[it]~~ shall enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election shall be required.

(b) If the commission or the executive director finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, the commission or executive director ~~[it]~~ shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the commission or the executive director entered under this section shall be subject to appeal or review within 30 days after entry of the order ~~[of the commission]~~ granting or denying the conversion.

(d) A copy of the ~~[commission]~~ order converting a district shall be filed in the deed records of the county or counties in which the district is located.

SECTION 11. Sections 49.322 and 54.031, Water Code, are repealed.

SECTION 12. Except as otherwise provided by this Act, this Act applies only to a statement of intent filed on or after the effective date of this Act. A rate change to which a statement of intent filed before the effective date of this Act applies is governed by the law in effect on the date the statement was filed, and that law is continued in effect for that purpose.

SECTION 13. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 635** (house committee printing) to read as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 5), strike "Section 13.043(h), Water Code, is" and substitute "Sections 13.043(h) and (i), Water Code, are".

(2) In SECTION 1 of the bill, in amended Section 13.043, Water Code (page 1, between lines 11 and 12), insert the following:

(i) The governing body of a municipally owned utility or a political subdivision, within 60 ~~[30]~~ days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the

boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

(3) In SECTION 2 of the bill, in amended Section 13.187(b), Water Code (page 1, lines 14-15), strike "mailed or delivered" and substitute "mailed, sent by e-mail, or delivered".

## **Floor Amendment No. 2**

Amend **CSSB 635** (house committee printing) by adding the following SECTIONS to the bill, numbered appropriately, and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0865 to read as follows:

Sec. 361.0865. CONSIDERATION OF PROCESSING OR TREATMENT FACILITY PERMIT APPLICATIONS. (a) This section applies only to an application for the issuance, amendment, extension, or renewal of a permit for a commercial facility that accepts nonhazardous liquid waste from municipal or industrial sources for processing or treatment. This section does not apply to a facility owned or operated by or affiliated with:

(1) a local government, including a facility leased to or from a local government; or

(2) a person who holds a permit to dispose of hazardous, municipal, or industrial solid waste.

(b) The commission may not issue, amend, extend, or renew a permit unless the commission determines that the applicant possesses adequate technical, managerial, and financial ability to operate the facility safely and in compliance with all applicable legal requirements. The commission shall consider, at a minimum:

(1) financial assurance information described by Section 361.085(a);

(2) evidence of the professional qualifications of the management or principals of the applicant;

(3) evidence of training, licensure, certification, or relevant experience of individuals employed by the applicant who are or will be involved in the operation of the facility;

(4) whether the applicant has a compliance history classification as a poor performer, as determined by rules adopted under Section 5.754, Water Code, or does not have a compliance history;

(5) information related to past compliance, in addition to the information provided under Section 361.084, as required by the commission, including information indicating:

(A) for the preceding five years, whether, in connection with an unauthorized acceptance or discharge of municipal solid waste:

(i) two or more administrative orders that assess penalties against the applicant or order the applicant to take corrective measures have been issued by the commission; or

(ii) four or more notices of violation have been issued by the commission to the applicant; and

(B) for the preceding 10 years, whether the facility, the applicant, the principal shareholders of the owner of the facility, or the individuals employed by the facility who are or will be responsible for the operation of the facility have been convicted of a violation of any environmental law; and

(6) any other evidence required by the commission relating to the applicant's ability to comply with all applicable legal requirements.

(c) The commission by rule shall adopt standards for making a determination under Subsection (b).

(d) The commission may impose conditions on the issuance, amendment, extension, or renewal of a permit designed to increase the likelihood of the applicant's operation of the facility safely and in compliance with all applicable legal requirements.

SECTION \_\_\_\_\_. The changes in law made by Section 361.0865, Health and Safety Code, as added by this Act, apply only to an application for the issuance, amendment, extension, or renewal of a permit that is received by the Texas Commission on Environmental Quality on or after the effective date of this Act. An application that is received before that date is governed by the law in effect at the time the application is received, and the former law is continued in effect for that purpose.

### **Floor Amendment No. 3**

Amend **CSSB 635** (committee printing) SECTION 2, by adding a new subsection to Section 13.187, Water Code, as follows:

(q) For the purpose of ratemaking proceedings initiated by an investor-owned utility under this Chapter an "affected county" is one that has more than 3000 customers in the county when the rate change is filed with the commission or a local regulatory authority.

### **Floor Amendment No. 7**

Amend **CSSB 635** (house committee report) as follows:

(1) Redesignate SECTIONS 1-11 of the bill as ARTICLE 1, name the ARTICLE "GENERAL AUTHORITY OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY," and renumber all SECTIONS appropriately.

(2) Strike SECTION 1 of the bill, amending Section 13.043(h), Water Code (page 1, line 7 through page 1, line 11), and substitute the following:

SECTION 1. Section 13.043(h), Water Code, is amended to read as follows:

(h) The utility commission or the executive director of the utility commission may~~[on a motion by the executive director or by the appellant under Subsection (a), (b), or (f) of this section,]~~ establish interim rates to be in effect until a final decision is made in an appeal filed under Subsection (a), (b), or (f).

(3) In SECTION 2 of the bill, in amended Section 13.187(b), Water Code (page 1, line 16), strike "executive director" and substitute "executive director of the utility commission".

(4) In SECTION 2 of the bill, in amended Section 13.187(l), Water Code (page 1, line 20), strike "commission, the executive director", and substitute "utility commission, the executive director of the utility commission".

(5) Strike SECTION 3 of the bill, amending Section 13.242(c), Water Code (page 1, line 22 through page 2, line 7) and substitute the following:

SECTION 3. Section 13.242(c), Water Code is amended to read as follows:

(c) The utility commission may by rule allow a municipality or utility or water supply corporation to render retail water or sewer service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 [~~of this code~~] that it intends to provide retail water or sewer service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

(6) Strike SECTION 4 of the bill (page 2, lines 8-16).

(7) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 13.084, Water Code, is amended to read as follows:

Sec. 13.084. AUTHORITY OF GOVERNING BODY; COST REIMBURSEMENT. The governing body of any municipality, [~~or~~] the commissioners court of an affected county, or the commissioners court of a county with a population of more than four million shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination of these experts to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility ratemaking proceedings. The water and sewer utility engaged in those proceedings shall be required to reimburse the governing body or the commissioners court for the reasonable costs of those services and shall be allowed to recover those expenses through its rates with interest during the period of recovery.

(8) Add the following ARTICLES to the bill:

## ARTICLE 2. WATER AND SEWER UTILITIES

SECTION 2.01. Section 13.002, Water Code, is amended by amending Subdivisions (2) and (18) and adding Subdivision (22-a) to read as follows:

(2) "Affiliated interest" or "affiliate" means:

(A) any person or corporation owning or holding directly or indirectly five percent or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a utility;

(C) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly five percent or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of five percent of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(F) any person or corporation that the utility commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or

that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the utility commission, after notice and hearing, determines is exercising substantial influence over the policies and actions of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(18) "Regulatory authority" means, in accordance with the context in which it is found, either the commission, the utility commission, or the governing body of a municipality.

(22-a) "Utility commission" means the Public Utility Commission of Texas.

SECTION 2.02. Section 13.004, Water Code, is amended to read as follows:

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

(b) If the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65, the utility commission's jurisdiction provided by this section ends.

SECTION 2.03. Section 13.011, Water Code, is amended to read as follows:

Sec. 13.011. EMPLOYEES. (a) The executive director of the utility commission and the executive director of the commission, subject to approval, as applicable, by the utility commission or the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out each agency's powers and duties under this chapter.

(b) The executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The executive director of the utility commission and the utility commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the utility commission under this subchapter. The duties of the respective executive directors and staffs [~~director and the staff~~] include:

(1) accumulation of evidence and other information from water and sewer utilities, [~~and~~] from the agency and governing body, [~~commission and the board~~] and from other sources for the purposes specified by this chapter;

- (2) preparation and presentation of evidence before the agency [~~commission~~] or its appointed examiner in proceedings;
- (3) conducting investigations of water and sewer utilities under the jurisdiction of the agency [~~commission~~];
- (4) preparation of recommendations that the agency [~~commission~~] undertake an investigation of any matter within its jurisdiction;
- (5) preparation of recommendations and a report for inclusion in the annual report of the agency [~~commission~~];
- (6) protection and representation of the public interest[, ~~together with the public interest advocate,~~] before the agency [~~commission~~]; and
- (7) other activities that are reasonably necessary to enable the executive director and the staff to perform their duties.

SECTION 2.04. Section 13.014, Water Code, is amended to read as follows:

Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR UTILITY COMMISSION. The attorney general shall represent the commission or the utility commission under this chapter in all matters before the state courts and any court of the United States.

SECTION 2.05. Subchapter B, Chapter 13, Water Code, is amended by adding Section 13.017 to read as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND DUTIES. (a) In this section, "counsellor" and "office" have the meanings assigned by Section 11.003, Utilities Code.

(b) The office represents the interests of residential and small commercial consumers under this chapter. The office:

(1) shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2) shall advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A) residential consumers, as a class, in any proceeding before the utility commission, including an alternative dispute resolution proceeding; and

(B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;

(4) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:

(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear; or

(B) in which the counsellor determines that residential consumers or small commercial consumers are in need of representation;

(5) is entitled to the same access as a party, other than utility commission staff, to records gathered by the utility commission under Section 13.133;

(6) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the utility commission;

(7) may represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail utility services that is unresolved before the utility commission; and

(8) may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.

(c) This section does not limit the authority of the utility commission to represent residential or small commercial consumers.

(d) The appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The counsellor may not be grouped with any other party.

SECTION 2.06. Section 13.041, Water Code, is amended to read as follows:

Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND COMMISSION ~~[POWER]~~; RULES; HEARINGS. (a) The utility commission may regulate and supervise the business of each ~~[every]~~ water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. The commission shall regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. The utility commission and the commission ~~[and]~~ may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers ~~[this power]~~ and jurisdiction. The utility commission may consult with the commission as necessary in carrying out its duties related to the regulation of water and sewer utilities.

(b) The commission and the utility commission shall adopt and enforce rules reasonably required in the exercise of ~~[its]~~ powers and jurisdiction of each agency, including rules governing practice and procedure before the commission and the utility commission.

(c) The commission and the utility commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering this chapter or the rules, orders, or other actions of the commission or the utility commission.

(d) The utility commission may issue emergency orders, with or without a hearing:

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act; and

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred.

(e) The utility commission may establish reasonable compensation for the temporary service required under Subsection (d)(2) ~~[of this section]~~ and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.



(f) If an order is issued under Subsection (d) without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the utility commission.

(g) The regulatory assessment required by Section 5.701(n) [~~5.235(n) of this code~~] is not a rate and is not reviewable by the utility commission under Section 13.043 [~~of this code~~]. The commission has the authority to enforce payment and collection of the regulatory assessment.

SECTION 2.07. Section 13.042, Water Code, is amended to read as follows:

Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the limitations imposed in this chapter and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

(b) The governing body of a municipality by ordinance may elect to have the utility commission exercise exclusive original jurisdiction over the utility rates, operation, and services of utilities, within the incorporated limits of the municipality.

(c) The governing body of a municipality that surrenders its jurisdiction to the utility commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the utility commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the utility commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(d) The utility commission shall have exclusive appellate jurisdiction to review orders or ordinances of those municipalities as provided in this chapter.

(e) The utility commission shall have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

(f) This subchapter does not give the utility commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits or to affect or limit the power, jurisdiction, or duties of a municipality that regulates land and supervises water and sewer utilities within its corporate limits, except as provided by this code.

SECTION 2.08. Subsections (a), (b), (c), (e), (f), (g), and (j), Section 13.043, Water Code, are amended to read as follows:

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission. This subsection does not apply to a municipally owned utility. An appeal under this subsection must be initiated within 90 days after the date of notice of the final decision by the governing body by filing a petition for review with the utility commission and by serving copies on all parties to the original rate proceeding. The utility commission shall hear the appeal de novo and shall fix in its final order the

rates the governing body should have fixed in the action from which the appeal was taken and may include reasonable expenses incurred in the appeal proceedings. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the utility provider and may order refunds or allow a surcharge to recover lost revenues. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(4) a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(c) An appeal under Subsection (b) ~~[of this section]~~ must be initiated by filing a petition for review with the utility commission and the entity providing service within 90 days after the effective day of the rate change or, if appealing under Subdivision (b)(2) or (5) ~~[of this section]~~, within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b) ~~[of this section]~~.

(e) In an appeal under Subsection (b) ~~[of this section]~~, the utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the service provider, may order refunds or allow a surcharge to recover lost revenues, and may allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. The rates established by the utility commission in an appeal under Subsection (b) ~~[of this section]~~ remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the utility commission determines that a financial hardship exists.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service by the filing of a petition by the retail public utility.

(g) An applicant for service from an affected county or a water supply or sewer service corporation may appeal to the utility commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. In addition to the factors specified under Subsection (j), in an appeal brought under this subsection the utility commission shall determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. If the utility commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid for that applicant. An appeal under this subsection must be initiated within 90 days after the date written notice is provided to the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant's initial request for that service. A determination made by the utility commission on an appeal under this subsection is binding on all similarly situated applicants for service, and the utility commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(j) In an appeal under this section, the utility commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility. For agreements between municipalities the utility commission shall consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.

SECTION 2.09. Subsection (b), Section 13.044, Water Code, is amended to read as follows:

(b) Notwithstanding the provisions of any resolution, ordinance, or agreement, a district may appeal the rates imposed by the municipality by filing a petition with the utility commission. The utility commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable. The utility commission shall fix the rates to be charged by the municipality and the municipality may not increase such rates without the approval of the utility commission.

SECTION 2.10. Section 13.046, Water Code, is amended to read as follows:

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The utility commission by rule shall establish a procedure that allows a retail public utility

that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system and to bill the customers for the services at that rate immediately to recover service costs.

(b) The rules must provide a streamlined process that the retail public utility that takes over the nonfunctioning system may use to apply to the utility commission for a ruling on the reasonableness of the rates the utility is charging under Subsection (a). The process must allow for adequate consideration of costs for interconnection or other costs incurred in making services available and of the costs that may necessarily be incurred to bring the nonfunctioning system into compliance with utility commission and commission rules.

(c) The utility commission shall provide a reasonable period for the retail public utility that takes over the nonfunctioning system to bring the nonfunctioning system into compliance with utility commission and commission rules during which the utility commission or the commission may not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. The utility commission must consult with the utility before determining the period and may grant an extension of the period for good cause.

SECTION 2.11. Subchapter C, Chapter 13, Water Code, is amended by adding Section 13.047 to read as follows:

Sec. 13.047. REVIEW AND ORDER FOR CERTAIN WHOLESALE WATER RATES. (a) A conservation and reclamation district that provides potable water service to district customers may file an application with the utility commission requesting a review of the rate a supplier of raw or treated surface water or groundwater charges the district to determine whether the rate adversely affects the public interest.

(b) The utility commission shall presume that the rate adversely affects the public interest if it is shown on hearing that the rate the supplier charges the district at the time the application is made is at least 50 percent higher than the rate charged at any time during the 36-month period before the date of the application. The utility commission shall determine the rate the supplier charges the district adversely affects the public interest if the utility commission determines:

(1) the protested rate impairs the district's ability to continue to provide service to its retail customers, based on the district's financial integrity and operational capability;

(2) the rate evidences the supplier's abuse of monopoly power in the supplier's provision of water to the district after weighing all relevant factors, including:

(A) the disparate bargaining power of the parties, including the district's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative supplies of water;

(B) whether the supplier failed to reasonably demonstrate the changed conditions that are the basis for a change in rates;

(C) whether the supplier changed the computation of the revenue requirement or rate from one methodology to another;

(D) where the supplier demands the rate in accordance with a contract, whether other valuable consideration was paid or received by a party incident to that contract;

(E) incentives necessary to encourage regional projects or water conservation measures;

(F) the supplier's obligation to meet federal and state wastewater discharge and drinking water standards;

(G) the rates charged in this state by other similarly situated suppliers of water for resale; and

(H) the supplier's rates for water charged to the supplier's retail customers, if any, compared to the retail rates the district charges the district's retail customers as a result of the wholesale rate the supplier demands from the district; or

(3) the rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the supplier charges other wholesale customers.

(c) If the utility commission finds on hearing the application that the rate adversely affects the public interest or if the rate is presumed to adversely affect the public interest as provided by Subsection (b), the utility commission by order shall fix a just and reasonable rate at which the supplier may charge the district. In fixing the rate, the utility commission shall use a methodology that preserves the financial integrity of the supplier.

SECTION 2.12. Section 13.081, Water Code, is amended to read as follows:

Sec. 13.081. FRANCHISES. This chapter may not be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for their use, but no provision of any franchise agreement may limit or interfere with any power conferred on the utility commission by this chapter. If a municipality performs regulatory functions under this chapter, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this chapter.

SECTION 2.13. Section 13.082, Water Code, is amended to read as follows:

Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT AREAS. (a) Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the utility commission has assumed jurisdiction over the respective utility pursuant to this chapter.

(b) If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the utility commission under this chapter to the extent that this chapter applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the utility commission or other standards and rules not inconsistent with them. The utility commission's rules relating to service and response to requests for service for utilities operating within a municipality's corporate limits apply unless the municipality adopts its own rules.

(c) Notwithstanding any election, the utility commission may consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and may also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider water and sewer utilities' revenues and return on investment in nonexempt areas.

(d) Utilities serving exempt areas are subject to the reporting requirements of this chapter. Those reports and tariffs shall be filed with the governing body of the municipality as well as with the utility commission.

(e) This section does not limit the duty and power of the utility commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

SECTION 2.14. Section 13.085, Water Code, is amended to read as follows:

Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request, the utility commission may advise and assist a municipality, an affected county, and a county with a population of more than four million [~~municipalities and affected counties~~] in connection with questions and proceedings arising under this chapter. This assistance may include aid [~~to municipalities or an affected county~~] in connection with matters pending before the utility commission, the courts, the governing body of any municipality, [~~or~~] the commissioners court of an affected county, or the commissioners court of a county with a population of more than four million, including making members of the staff available to them as witnesses and otherwise providing evidence.

SECTION 2.15. Subsection (c), Section 13.087, Water Code, is amended to read as follows:

(c) Notwithstanding any other provision of this chapter, the utility commission has jurisdiction to enforce this section.

SECTION 2.16. Subsections (a), (b), (c), and (e), Section 13.131, Water Code, are amended to read as follows:

(a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the utility commission uniform accounts of all business transacted. The utility commission may also prescribe forms of books, accounts, records, and memoranda to be kept by those utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda that in the judgment of the utility commission may be necessary to carry out this chapter.

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books,

accounts, records, and memoranda prescribed by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(c) The utility commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility and shall require every utility to carry a proper and adequate depreciation account in accordance with those rates and methods and with any other rules the utility commission prescribes. Rules adopted under this subsection must require the book cost less net salvage of depreciable utility plant retired to be charged in its entirety to the accumulated depreciation account in a manner consistent with accounting treatment of regulated electric and gas utilities in this state. Those rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate-setting and appeal proceedings.

(e) Every utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the utility commission and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

SECTION 2.17. Section 13.132, Water Code, is amended to read as follows:

Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The utility commission may:

(1) require that water and sewer utilities report to it any information relating to themselves and affiliated interests both inside and outside this state that it considers useful in the administration of this chapter;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any utility and any affiliated interest be filed with it and require that such a contract or arrangement that is not in writing be reduced to writing;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation, other than salary or wages subject to the withholding of federal income tax, made to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body be filed with it.

(b) On the request of the governing body of any municipality, the utility commission may provide sufficient staff members to advise and consult with the municipality on any pending matter.

SECTION 2.18. Subsection (b), Section 13.133, Water Code, is amended to read as follows:

(b) The regulatory authority may require, by order or subpoena served on any utility, the production within this state at the time and place it may designate of any books, accounts, papers, or records kept by that utility outside the state or verified copies of them if the regulatory authority [~~commission~~] so orders. A utility failing or refusing to comply with such an order or subpoena violates this chapter.

SECTION 2.19. Subsections (b) and (c), Section 13.136, Water Code, are amended to read as follows:

(b) Each utility annually shall file a service and financial report in a form and at times specified by utility commission rule.

(c) Every water supply or sewer service corporation shall file with the utility commission tariffs showing all rates that are subject to the appellate jurisdiction of the utility commission and that are in force at the time for any utility service, product, or commodity offered. Every water supply or sewer service corporation shall file with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished. The filing required under this subsection shall be for informational purposes only.

SECTION 2.20. Section 13.137, Water Code, is amended to read as follows:

Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

(1) make available and notify its customers of a business location where its customers may make payments to prevent disconnection of or to restore service:

(A) in each county in which the utility provides service; or

(B) not more than 20 miles from the residence of any residential customer if there is no location to receive payments in the county; and

(2) have an office in a county of this state or in the immediate area in which its property or some part of its property is located in which it shall keep all books, accounts, records, and memoranda required by the utility commission to be kept in this state.

(b) The utility commission by rule may provide for waiving the requirements of Subsection (a)(1) for a utility for which meeting those requirements would cause a rate increase or otherwise harm or inconvenience customers. The rules must provide for an additional 14 days to be given for a customer to pay before a utility that is granted a waiver may disconnect service for late payment.

(c) Books, accounts, records, or memoranda required by the regulatory authority to be kept in the state may not be removed from the state, except on conditions prescribed by the utility commission.

SECTION 2.21. Subsection (b), Section 13.139, Water Code, is amended to read as follows:

(b) The governing body of a municipality, as the regulatory authority for public utilities operating within its corporate limits, and the utility commission or the commission as the regulatory authority for public utilities operating outside the corporate limits of any municipality, after reasonable notice and hearing on its own motion, may:

(1) ascertain and fix just and reasonable standards, classifications, regulations, service rules, minimum service standards or practices to be observed and followed with respect to the service to be furnished;



(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement of service; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any utility service.

SECTION 2.22. Section 13.1395, Water Code, is amended by adding Subsection (m) to read as follows:

(m) The commission shall coordinate with the utility commission in the administration of this section.

SECTION 2.23. Subsection (b), Section 13.142, Water Code, is amended to read as follows:

(b) The utility commission shall adopt rules concerning payment of utility bills that are consistent with Chapter 2251, Government Code.

SECTION 2.24. Section 13.144, Water Code, is amended to read as follows:

Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the utility commission and the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

SECTION 2.25. Subsection (a), Section 13.147, Water Code, is amended to read as follows:

(a) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the utility commission to issue an order requiring the water service provider to provide that service.

SECTION 2.26. Subsection (b), Section 13.181, Water Code, is amended to read as follows:

(b) Subject to this chapter, the utility commission has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter. For this purpose the regulatory authority may fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services and

for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body. The utility commission may adopt rules which authorize a utility which is permitted under Section 13.242(c) to provide service without a certificate of public convenience and necessity to request or implement a rate increase and operate according to rules, regulations, and standards of service other than those otherwise required under this chapter provided that rates are just and reasonable for customers and the utility and that service is safe, adequate, efficient, and reasonable.

SECTION 2.27. Subsections (c) and (d), Section 13.182, Water Code, are amended to read as follows:

(c) For ratemaking purposes, the utility commission may treat two or more municipalities served by a utility as a single class wherever the utility commission considers that treatment to be appropriate.

(d) The utility commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis.

SECTION 2.28. Subsection (d), Section 13.183, Water Code, is amended to read as follows:

(d) A regulatory authority other than the utility commission may not approve an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

SECTION 2.29. Subsection (a), Section 13.184, Water Code, is amended to read as follows:

(a) Unless the utility commission establishes alternate rate methodologies in accordance with Section 13.183(c), the utility commission may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. The governing body of a municipality exercising its original jurisdiction over rates and services may use alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c). Unless the municipal regulatory authority uses alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c), it may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

SECTION 2.30. Subsections (d), (k), and (o), Section 13.187, Water Code, are amended to read as follows:

(d) Except as provided by Subsection (d-1), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n) [~~of this code~~].

(k) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (e), the regulatory authority may, pending the hearing and a decision, suspend the date the rate change would otherwise be effective. Except as provided by Subsection (d-1), the proposed rate may not be suspended for longer than:

- (1) 90 days by a local regulatory authority; or
- (2) 150 days by the utility commission.

(o) If a regulatory authority other than the utility commission establishes interim rates or an escrow account, the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility.

SECTION 2.31. Subsection (a), Section 13.188, Water Code, is amended to read as follows:

(a) Notwithstanding any other provision in this chapter, the utility commission by rule shall adopt a procedure allowing a utility to file with the utility commission an application to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs in a pass through clause. The utility commission, by rule, shall require the pass through of documented decreases in energy costs within a reasonable time. The pass through, whether a decrease or increase, shall be implemented on no later than an annual basis, unless the utility commission determines a special circumstance applies.

SECTION 2.32. Subsections (a) and (d), Section 13.241, Water Code, are amended to read as follows:

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the utility commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(d) Before the utility commission grants a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate to the utility commission that regionalization or consolidation with another retail public utility is not economically feasible.

SECTION 2.33. Subsection (a), Section 13.242, Water Code, is amended to read as follows:

(a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

SECTION 2.34. Section 13.244, Water Code, is amended to read as follows:

Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION; EVIDENCE AND CONSENT. (a) To obtain a certificate of public convenience and necessity or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the utility commission an application for a certificate or for an amendment as provided by this section.

(b) Each public utility and water supply or sewer service corporation shall file with the utility commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the utility commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

(c) Each applicant for a certificate or for an amendment shall file with the utility commission evidence required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

(d) An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain:

- (1) a description of the proposed service area by:
  - (A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;
  - (B) the Texas State Plane Coordinate System;
  - (C) verifiable landmarks, including a road, creek, or railroad line; or
  - (D) if a recorded plat of the area exists, lot and block number;
- (2) a description of any requests for service in the proposed service area;
- (3) a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area;
- (4) a description of the sources of funding for all facilities;
- (5) to the extent known, a description of current and projected land uses, including densities;
- (6) a current financial statement of the applicant;
- (7) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:
  - (A) at least 50 acres; and
  - (B) wholly or partially located within the proposed service area; and
- (8) any other item required by the utility commission.

SECTION 2.35. Subsections (b), (c), and (e), Section 13.245, Water Code, are amended to read as follows:

(b) Except as provided by Subsection (c), the utility commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c) If a municipality has not consented under Subsection (b) before the 180th day after the date the municipality receives the retail public utility's application, the utility commission shall grant the certificate of public convenience and necessity without the consent of the municipality if the utility commission finds that the municipality:

- (1) does not have the ability to provide service; or
- (2) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(e) If the utility commission makes a decision under Subsection (d) regarding the grant of a certificate of public convenience and necessity without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court. The court shall hear the petition within 120 days after the date the petition is filed. On final disposition, the court may award reasonable fees to the prevailing party.

SECTION 2.36. Subsection (c), Section 13.2451, Water Code, is amended to read as follows:

(c) The utility commission, after notice to the municipality and an opportunity for a hearing, may decertify an area outside a municipality's extraterritorial jurisdiction if the municipality does not provide service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area. This subsection does not apply to a certificate of public convenience and necessity for an area:

- (1) that was transferred to a municipality on approval of the utility commission; and
- (2) in relation to which the municipality has spent public funds.

SECTION 2.37. Subsections (a), (a-1), (b), (c), (d), (f), (h), and (i), Section 13.246, Water Code, are amended to read as follows:

(a) If an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, the utility commission shall cause notice of the application to be given to affected parties and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified. If requested, the utility commission shall fix a time and place for a hearing and give notice of the hearing. Any person affected by the application may intervene at the hearing.

(a-1) Except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), the utility commission shall require notice to be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the utility commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate notice to landowners. Notice under this subsection is not required for a matter filed with the utility commission or the commission under:

- (1) Section 13.248 or 13.255; or
- (2) Chapter 65.

(b) The utility commission may grant applications and issue certificates and amendments to certificates only if the utility commission finds that a certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The utility commission may issue a certificate or amendment as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(c) Certificates of public convenience and necessity and amendments to certificates shall be granted by the utility commission on a nondiscriminatory basis after consideration by the utility commission of:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity;
- (8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.

(d) The utility commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure that continuous and adequate utility service is provided.

(f) If two or more retail public utilities or water supply or sewer service corporations apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area and otherwise meet the requirements for obtaining a new certificate, the utility commission shall grant the certificate to the retail public utility or water supply or sewer service corporation that is more capable financially, managerially, and technically of providing continuous and adequate service.

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the utility commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective

without a further hearing or other process by the utility commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.

(i) A landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the utility commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

SECTION 2.38. Subsection (a), Section 13.247, Water Code, is amended to read as follows:

(a) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area pursuant to the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under Subsection (d). Except as provided by Section 13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the utility commission a certificate of public convenience and necessity that includes the areas to be served.

SECTION 2.39. Section 13.248, Water Code, is amended to read as follows:

Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the utility commission or the executive director of the utility commission after public notice [~~and hearing~~], are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 2.40. Subsections (b), (c), and (e), Section 13.250, Water Code, are amended to read as follows:

(b) Unless the utility commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate or a person who possesses facilities used to provide utility service shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a utility commission-ordered arrangement between the two service providers;

(3) nonuse; or

(4) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the utility commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the utility commission prescribes.

(e) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the utility commission and the commission in writing.

SECTION 2.41. Subsection (d), Section 13.2502, Water Code, is amended to read as follows:

(d) This section does not limit or extend the jurisdiction of the utility commission under Section 13.043(g).

SECTION 2.42. Section 13.251, Water Code, is amended to read as follows:

Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. Except as provided by Section 13.255 [~~of this code~~], a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c) [~~of this code~~]. The sale, assignment, or lease shall be on the conditions prescribed by the utility commission.

SECTION 2.43. Section 13.252, Water Code, is amended to read as follows:

Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY. If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the utility commission may issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.

SECTION 2.44. Section 13.253, Water Code, is amended to read as follows:

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. (a) After notice and hearing, the utility commission or the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Section 16.341 to:

(A) provide specified improvements in its service in a defined area if service in that area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the utility commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the utility commission;



(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service;

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

(4) issue an emergency order, with or without a hearing, under Section 13.041.

(b) If the utility commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Section 341.0355, Health and Safety Code, or under this chapter, the utility commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a ~~[commission]~~ meeting of the utility commission, may immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other financial assurance in an amount determined by the utility commission not to exceed the amount of the bond or financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard ~~[by the commissioners]~~ at a ~~[commission]~~ meeting of the utility commission. After notice and hearing, the utility commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

SECTION 2.45. Section 13.254, Water Code, is amended to read as follows:

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The utility commission at any time after notice and hearing may~~[, on its own motion or on receipt of a petition described by Subsection (a-1),]~~ revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if the utility commission ~~[it]~~ finds that:

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the utility commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The petitioner shall deliver, via certified mail, a copy of the petition to the certificate holder, who may submit information to the utility commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought;

(B) the timeframe within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; and

(D) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the utility commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service is capable of providing continuous and adequate service within the timeframe, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area.

(a-2) A landowner is not entitled to make the election described in Subsection (a-1) or (a-5) but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by the utility commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(a-3) Within 90 calendar days from the date the utility commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the utility commission shall grant the petition unless the utility commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The utility commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the utility commission may require an award of compensation as otherwise provided by this section.

(a-4) Chapter 2001, Government Code, does not apply to any petition filed under Subsection (a-1). The decision of the utility commission on the petition is final after any reconsideration authorized by the utility commission's rules and may not be appealed.

(a-5) As an alternative to decertification under Subsection (a) and expedited release under Subsection (a-1), the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000.

(a-6) The utility commission shall grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition. The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program. The utility commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under Subsection (a-5) as otherwise provided by this section.

(b) Upon written request from the certificate holder, the utility commission [~~executive director~~] may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Section 13.242(c).

(c) If the certificate of any retail public utility is revoked or amended, the utility commission may require one or more retail public utilities with their consent to provide service in the area in question. The order of the utility commission shall not be effective to transfer property.

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the utility commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. The utility

commission shall ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the utility commission of its intent to provide service to the decertified area.

(f) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the utility commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors.

(g-1) If the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies the utility commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 60 calendar days. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay half the cost of the third appraisal.

SECTION 2.46. Subsections (a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Section 13.255, Water Code, are amended to read as follows:

(a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase "franchised utility" shall mean a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised

utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the utility commission, and the utility commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the utility commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the utility commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility.

(c) The utility commission shall grant single certification to the municipality. The utility commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the utility commission shall also determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the utility commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e) [~~of this section~~]. The grant of single certification by the utility commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an amount into the registry of the court or to the retail public utility under Subsection (f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) In the event the final order of the utility commission is not appealed within 30 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the utility commission. In such event, the court shall render a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility as delineated by the utility commission's final order and property determined by the utility commission to be rendered useless or valueless by the granting of single certification; and

(2) orders payment to the retail public utility of adequate and just compensation for the property as determined by the utility commission in its final order.

(e) Any party that is aggrieved by a final order of the utility commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final. The hearing in such an appeal before the district court shall be by trial de novo on all issues. After the hearing, if the court determines that the municipally owned utility or franchised utility is entitled to single certification under the provisions of this section, the court shall enter a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property requested by the municipality to be transferred to the municipally owned utility or franchised utility and located within the singly certificated area and property determined by the court or jury to be rendered useless or valueless by the granting of single certification; and

(2) orders payment in accordance with Subsection (g) ~~[of this section]~~ to the retail public utility of adequate and just compensation for the property transferred and for the property damaged as determined by the court or jury.

(g-1) The utility commission shall adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g). The utility commission by rule shall adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which the utility commission determines that the municipality's application is administratively complete.

(k) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2):

(1) the utility commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or the utility commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees; and

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

(l) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality

are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the 10th business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the utility commission or a person the utility commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals. The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the utility commission.

(m) The utility commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.

SECTION 2.47. Section 13.2551, Water Code, is amended to read as follows:

Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a condition to decertification or single certification under Section 13.254 or 13.255, and on request by an affected retail public utility, the utility commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire certificate of public convenience and necessity of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(b) The utility commission shall order service to the entire area under Subsection (a) if the utility commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(c) The utility commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(d) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the utility commission, if applicable.

(e) The utility commission shall not order compensation to the decertificated retail utility if service to the entire service area is ordered under this section.

SECTION 2.48. Subsections (e), (i), (r), and (s), Section 13.257, Water Code, are amended to read as follows:

(e) The notice must be given to the prospective purchaser before the execution of a binding contract of purchase and sale. The notice may be given separately or as an addendum to or paragraph of the contract. If the seller fails to provide the notice required by this section, the purchaser may terminate the contract. If the seller provides the notice at or before the closing of the purchase and sale contract and the purchaser elects to close even though the notice was not timely provided before the execution of the contract, it is conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or pursue other remedies or rights under this section. Notwithstanding any provision of this section to the contrary, a seller, title insurance company, real estate broker, or examining attorney, or an agent, representative, or person acting on behalf of the seller, company, broker, or attorney, is not liable for damages under Subsection (m) or (n) or liable for any other damages to any person for:

(1) failing to provide the notice required by this section to a purchaser before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract if:

(A) the utility service provider did not file the map of the certificated service area in the real property records of the county in which the service area is located and with the utility commission depicting the boundaries of the service area of the utility service provider as shown in the real property records of the county in which the service area is located; and

(B) the utility commission did not maintain an accurate map of the certificated service area of the utility service provider as required by this chapter; or

(2) unintentionally providing a notice required by this section that is incorrect under the circumstances before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract.

(i) If the notice is given at closing as provided by Subsection (g), a purchaser, or the purchaser's heirs, successors, or assigns, may not maintain an action for damages or maintain an action against a seller, title insurance company, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, broker, or lienholder, by reason of the seller's use of the information filed with the utility commission by the utility service provider or the seller's use of the map of the certificated service area of the utility service provider filed in the real property records to determine whether the property to be purchased is within the certificated service area of the utility service provider. An action may not be maintained against a title insurance company for the failure to disclose that the described real property is included within the certificated service area of a utility service provider if the utility service provider did not file in the real property records or with the utility commission the map of the certificated service area.

(r) A utility service provider shall:



(1) record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the certificate of public convenience and necessity and of any amendment to the certificate as contained in the utility commission's records, and a boundary description of the service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number; and

(2) submit to the executive director of the utility commission evidence of the recording.

(s) Each county shall accept and file in its real property records a utility service provider's map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the utility commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

SECTION 2.49. Subsections (a) through (g), Section 13.301, Water Code, are amended to read as follows:

(a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

(1) file a written application with the utility commission; and

(2) unless public notice is waived by the executive director of the utility commission for good cause shown, give public notice of the action.

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The utility commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

(e) Before the expiration of the 120-day notification period, the executive director of the utility commission shall notify all known parties to the transaction and the Office of Public Utility Counsel whether ~~[of]~~ the executive director of the utility commission will ~~[director's decision whether to]~~ request that the utility commission hold a public hearing to determine if the transaction will serve the public interest. The executive director of the utility commission may request a hearing if:

- (1) the application filed with the utility commission or the public notice was improper;
  - (2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person;
  - (3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:
    - (A) noncompliance with the requirements of the utility commission, the commission, or the [Texas] Department of State Health Services; or
    - (B) continuing mismanagement or misuse of revenues as a utility service provider;
  - (4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or
  - (5) there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.
- (f) Unless the executive director of the utility commission requests that a public hearing be held, the sale, acquisition, lease, or rental may be completed as proposed:
- (1) at the end of the 120-day period; or
  - (2) at any time after the executive director of the utility commission notifies the utility or water supply or sewer service corporation that a hearing will not be requested.
- (g) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, or rental may not be completed unless the utility commission determines that the proposed transaction serves the public interest.
- SECTION 2.50. Section 13.302, Water Code, is amended to read as follows:
- Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. (a) A utility may not purchase voting stock in another utility doing business in this state and a person may not acquire a controlling interest in a utility doing business in this state unless the person or utility files a written application with the utility commission not later than the 61st day before the date on which the transaction is to occur.
- (b) The utility commission may require that a person acquiring a controlling interest in a utility demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.
- (c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The executive director of the utility commission may request that the utility commission hold a public hearing on the transaction if the executive director of the utility commission believes that a criterion prescribed by Section 13.301(e) applies.

(e) Unless the executive director of the utility commission requests that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60-day period; or

(2) at any time after the executive director of the utility commission notifies the person or utility that a hearing will not be requested.

(f) If a hearing is requested or if the person or utility fails to make the application to the utility commission as required, the purchase or acquisition may not be completed unless the utility commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

SECTION 2.51. Section 13.303, Water Code, is amended to read as follows:

Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may not loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the utility unless the utility reports the transaction to the utility commission within 60 days after the date of the transaction.

SECTION 2.52. Section 13.304, Water Code, is amended to read as follows:

Sec. 13.304. FORECLOSURE REPORT. (a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the utility commission and the commission in writing of that fact not later than the 10th day after the date on which the utility receives the notice.

(b) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by Section 13.301, but shall provide written notice to the utility commission and the commission before the 30th day preceding the date on which the foreclosure is completed.

(c) The financial institution may operate the utility for an interim period prescribed by utility commission rule before transferring or otherwise obtaining a certificate of convenience and necessity. A financial institution that operates a utility during an interim period under this subsection is subject to each utility commission rule to which the utility was subject and in the same manner.

SECTION 2.53. Section 13.341, Water Code, is amended to read as follows:

Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The utility commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the utility commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

SECTION 2.54. Section 13.342, Water Code, is amended to read as follows:

Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The utility commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

SECTION 2.55. Subsection (a), Section 13.343, Water Code, is amended to read as follows:

(a) The owner of a utility that supplies retail water service may not contract to purchase from an affiliated supplier wholesale water service for any of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days to remedy an emergency condition, as defined by utility commission or commission rule; or

(2) the executive director of the utility commission determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

SECTION 2.56. Section 13.381, Water Code, is amended to read as follows:

Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party to a proceeding before the utility commission or the commission is entitled to judicial review under the substantial evidence rule.

SECTION 2.57. Subsection (a), Section 13.382, Water Code, is amended to read as follows:

(a) Any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by the utility commission are excessive and who is a prevailing party in proceedings for review of a utility commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before the utility commission and the court. The amount of the attorney's fees shall be fixed by the court.

SECTION 2.58. Section 13.411, Water Code, is amended to read as follows:

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) If the utility commission or the commission has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the utility commission or the commission entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the utility commission or the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the utility commission or the commission against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

(b) If the executive director of the utility commission or the executive director of the commission has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the executive director of the utility commission or the executive director of the commission shall immediately:

- (1) notify the utility's representative; and
- (2) initiate enforcement action consistent with:
  - (A) this subchapter; and
  - (B) procedural rules adopted by the utility commission or the commission.

SECTION 2.59. Section 13.4115, Water Code, is amended to read as follows:

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. In regard to a customer complaint arising out of a charge made by a public utility, if the utility commission [~~the executive director~~] finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the utility commission, the utility commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 days of receiving the order is a violation for which the utility commission may impose an administrative penalty under Section 13.4151.

SECTION 2.60. Subsections (a), (f), and (g), Section 13.412, Water Code, are amended to read as follows:

(a) At the request of the utility commission or the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs the utility commission or the commission that the owner is abandoning the system;
- (3) violates a final order of the utility commission or the commission; or
- (4) allows any property owned or controlled by it to be used in violation of a final order of the utility commission or the commission.

(f) For purposes of this section and Section 13.4132, abandonment may include but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the utility commission or the commission or the utility's customers; and

(7) failure to provide the utility commission or the commission with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek ~~[commission]~~ approval from the utility commission and the commission to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

SECTION 2.61. Section 13.413, Water Code, is amended to read as follows:

Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of all or part of the real or personal property of a water or sewer utility against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

- (1) payment of fees to the receiver for his services;
- (2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and
- (3) payment of costs incurred in ensuring that any property owned or controlled by a water or sewer utility is not used in violation of a final order of the utility commission or the commission.

SECTION 2.62. Section 13.4131, Water Code, is amended to read as follows:

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The utility commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or a rule adopted under this chapter ~~[commission rules]~~, or noncompliance with an order issued under this chapter ~~[commission orders]~~.

(b) While supervising a utility, the utility commission may require the utility to abide by conditions and requirements prescribed by the utility commission, including:

- (1) management requirements;
- (2) additional reporting requirements;
- (3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and
- (4) a requirement that the utility place the utility's funds into an account in a financial institution approved by the utility commission and use of those funds shall be restricted to reasonable and necessary utility expenses.

(c) While supervising a utility, the utility commission may require that the utility obtain ~~[commission]~~ approval from the utility commission before taking any action that may be restricted under Subsection (b) ~~[of this section]~~. Any action or transaction which occurs without ~~[commission]~~ approval may be voided by the utility commission.

SECTION 2.63. Subsections (a) and (c), Section 13.4133, Water Code, are amended to read as follows:

(a) Notwithstanding the requirements of Section 13.187 ~~[of this code]~~, the utility commission may authorize an emergency rate increase for a utility for which a person has been appointed under Section 13.4132 ~~[of this code]~~ or for which a receiver has been appointed under Section 13.412 ~~[of this code]~~ if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(c) The utility commission shall schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. The utility commission shall require the utility to provide notice of the hearing to each customer and to the Office of Public Utility Counsel. The additional revenues collected under an emergency rate increase are subject to refund if the utility commission finds that the rate increase was larger than necessary to ensure continuous and adequate service.

SECTION 2.64. Subsections (a) and (c), Section 13.414, Water Code, are amended to read as follows:

(a) Any retail public utility or affiliated interest that violates this chapter, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, direction, or requirement of the utility commission or the commission or decree or judgment of a court is subject to a civil penalty of not less than \$100 nor more than \$5,000 for each violation.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the utility commission or the commission in a court of competent jurisdiction to recover the penalty under this section.

SECTION 2.65. Subsections (a) through (k) and (m), Section 13.4151, Water Code, are amended to read as follows:

(a) If a person, affiliated interest, or entity subject to the jurisdiction of the utility commission or the commission violates this chapter or a rule or order adopted under this chapter, the utility commission or the commission, as applicable, may assess a penalty against that person, affiliated interest, or entity as provided by this section. The penalty may be in an amount not to exceed \$500 a day. Each day a violation continues may be considered a separate violation.

(b) In determining the amount of the penalty, the utility commission or the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director of the utility commission or the executive director of the commission concludes that a violation has occurred, the executive director of the utility commission or the executive director of the commission may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, affiliated interest, or retail public utility charged, and recommending the amount of that

proposed penalty. The executive director of the utility commission or the executive director of the commission shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b) ~~[of this section]~~, and shall analyze each factor for the benefit of the agency ~~[commission]~~.

(d) Not later than the 10th day after the date on which the report is issued, the executive director of the utility commission or the executive director of the commission shall give written notice of the report to the person, affiliated interest, or retail public utility charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person, affiliated interest, or retail public utility charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person, affiliated interest, or retail public utility charged may give the agency ~~[commission]~~ written consent to the ~~[executive director's]~~ report described by Subsection (c), including the recommended penalty, or may make a written request for a hearing.

(f) If the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (c) ~~[by the executive director]~~ or fails to timely respond to the notice, the utility commission or the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the ~~[executive director's]~~ report. If the utility commission or the commission assesses the penalty recommended by the report, the utility commission or the commission shall give written notice to the person, affiliated interest, or retail public utility charged of its decision.

(g) If the person, affiliated interest, or retail public utility charged requests or the utility commission or the commission orders a hearing, the agency ~~[commission]~~ shall call a hearing and give notice of the hearing. As a result of the hearing, the agency ~~[commission]~~ by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the agency ~~[commission]~~ shall analyze each of the factors provided by Subsection (b) ~~[of this section]~~.

(h) The utility commission or the commission shall give notice of its decision to the person, affiliated interest, or retail public utility charged, and if the agency ~~[commission]~~ finds that a violation has occurred and has assessed a penalty, the agency ~~[commission]~~ shall give written notice to the person, affiliated interest, or retail public utility charged of its findings, of the amount of the penalty, and of the person's, affiliated interest's, or retail public utility's right to judicial review of the agency's ~~[commission's]~~ order. If the agency ~~[commission]~~ is required to give notice of a penalty under this subsection or Subsection (f) ~~[of this section]~~, the agency ~~[commission]~~ shall file notice of the agency's ~~[its]~~ decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.



(i) Within the 30-day period immediately following the day on which the agency's ~~[commission's]~~ order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person, affiliated interest, or retail public utility charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person, affiliated interest, or retail public utility seeks judicial review of the fact of the violation, the amount of the penalty, or both:

(A) forward the amount of the penalty to the agency ~~[commission]~~ for placement in an escrow account; or

(B) post with the agency ~~[commission]~~ a supersedeas bond in a form approved by the agency ~~[commission]~~ for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) Failure to forward the money to or to post the bond with the agency ~~[commission]~~ within the time provided by Subsection (i) ~~[of this section]~~ constitutes a waiver of all legal rights to judicial review. If the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond as provided by Subsection (i) ~~[of this section]~~, the agency ~~[commission]~~ or the executive director of the agency may forward the matter to the attorney general for enforcement.

(k) Judicial review of the order or decision of the agency ~~[commission]~~ assessing the penalty shall be under the substantial evidence rule and may be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(m) Notwithstanding any other provision of law, the agency ~~[commission]~~ may compromise, modify, extend the time for payment of, or remit, with or without condition, any penalty imposed under this section.

SECTION 2.66. Section 13.417, Water Code, is amended to read as follows:

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail public utility fails to comply with any lawful order of the utility commission or the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the utility commission or the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 2.67. Section 13.418, Water Code, is amended to read as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings shall be ~~[paid to the commission and]~~ deposited in the general revenue fund.

(b) Fines and penalties collected from a public utility under this chapter in other than criminal proceedings shall be ~~[paid to the commission and]~~ deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 2.68. Subdivision (7), Section 13.501, Water Code, is amended to read as follows:

(7) "Multiple use facility" means commercial or industrial parks, office complexes, marinas, and others specifically identified in utility commission rules with five or more units.

SECTION 2.69. Subsection (e), Section 13.502, Water Code, is amended to read as follows:

(e) An owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may not change from submetered billing to allocated billing unless:

(1) the executive director of the utility commission approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

(2) the property owner meets rental agreement requirements established by the utility commission.

SECTION 2.70. Subsections (a), (b), and (e), Section 13.503, Water Code, are amended to read as follows:

(a) The utility commission shall encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources.

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may not impose on the tenant any extra charges, over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager, and that the rental unit or apartment house owner or manager shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. The rules shall allow an owner or manager to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed five percent of the bill paid late. All submetering equipment is subject to the rules and standards established by the utility commission for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140 [~~of this code~~].

(e) The utility commission may authorize a building owner to use submetering equipment that relies on integrated radio based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions.

SECTION 2.71. Section 13.5031, Water Code, is amended to read as follows:

Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any other law, the utility commission shall adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for

prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

(1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the manufactured home rental community, apartment house, or multiple use facility;

(2) the rental agreement contain a statement of the average manufactured home, apartment, or multiple use facility unit monthly bill for all units for any allocation of those utilities for the previous calendar year;

(3) except as provided by this section, an owner or condominium manager may not impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or multiple use facility;

(4) the owner or condominium manager shall maintain adequate records regarding the utility consumption of the manufactured home rental community, apartment house, or multiple use facility, the charges assessed by the retail public utility, and the allocation of the utility costs to the tenants;

(5) the owner or condominium manager shall maintain all necessary records concerning utility allocations, including the retail public utility's bills, and shall make the records available for inspection by the tenants during normal business hours; and

(6) the owner or condominium manager may charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed five percent of the bill paid late.

SECTION 2.72. Section 13.505, Water Code, is amended to read as follows:

Sec. 13.505. ENFORCEMENT. In addition to the enforcement provisions contained in Subchapter K [~~of this chapter~~], if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility commission regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. However, an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake.

SECTION 2.73. Section 13.512, Water Code, is amended to read as follows:

Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION CONTRACTS. Any eligible city is authorized to enter into privatization contracts if such action is recommended by the board of utility trustees and authorized by the governing body of the eligible city pursuant to an ordinance. Any privatization contract entered into prior to the effective date of this Act is validated, ratified, and approved. Each eligible city shall file a copy of its privatization contract with the utility commission, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

SECTION 2.74. Section 13.513, Water Code, is amended to read as follows:

Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider shall not constitute a "water and sewer utility," a "public utility," a "utility," or a "retail public utility" within the meaning of this chapter [~~Chapter 13~~] as a result of entering into or performing a privatization contract, if the governing body of the eligible city shall so elect by ordinance and provide notice thereof in writing to the utility commission; provided, however, this provision shall not affect the application of this chapter [~~Chapter 13~~] to an eligible city itself. Notwithstanding anything contained in this section, any service provider who seeks to extend or render sewer service to any person or municipality other than, or in addition to, an eligible city may be a "public utility" for the purposes of this chapter [~~Chapter 13~~] with respect to such other person or municipality.

SECTION 2.75. Subsection (a), Section 5.013, Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;

(6) conduct of the state's hazardous spill prevention and control program;

(7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;

(8) the administration of a portion of the state's injection well program;

(9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;

(10) the state's responsibilities relating to regional waste disposal;

(11) the responsibilities assigned to the commission by Chapters 361, 363, 382, and 401, Health and Safety Code; and

(12) [~~administration of the state's water rate program under Chapter 13 of this code; and~~

~~(13)~~] any other areas assigned to the commission by this code and other laws of this state.

SECTION 2.76. (a) On June 1, 2012, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas:

(1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the economic regulation of water and sewer utilities, including the issuance and transfer of certificates of convenience

and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Chapter 13, Water Code, as provided by this article;

(2) any obligations and contracts of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred by this article;

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used for purposes of the commission's powers and duties directly related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article; and

(3) establishes a plan for the transfer of all pending applications, hearings, rulemaking proceedings, and orders relating to the economic regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article, from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas.

(c) The memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) The executive directors of the Texas Commission on Environmental Quality and the Public Utility Commission of Texas may agree in the memorandum of understanding under this section to transfer to the Public Utility Commission of Texas any personnel of the Texas Commission on Environmental Quality whose functions predominantly involve powers, duties, obligations, functions, and activities related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall appoint a transition team to accomplish the purposes of this section. The transition team shall establish guidelines on how the two agencies will cooperate regarding:

- (1) meeting federal drinking water standards;
- (2) maintaining adequate supplies of water;
- (3) meeting established design criteria for wastewater treatment plants;
- (4) demonstrating the economic feasibility of regionalization; and
- (5) serving the needs of economically distressed areas.

(f) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas and remains in effect until amended or replaced by that agency.

(g) The memorandum required by this section must be completed by April 1, 2012.

(h) The Public Utility Commission of Texas and the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

SECTION 2.77. (a) The Public Utility Commission of Texas shall conduct a comparative analysis of the ratemaking authority of the commission before the effective date of this Act and the ratemaking authority of the commission after the transition described in Section 2.75 of this article, to identify potential for procedural standardization. The Public Utility Commission of Texas shall issue a report of the analysis, with recommendations regarding rate standardization, for consideration by the 83rd Legislature.

(b) The Public Utility Commission of Texas shall prepare a report describing staffing changes related to the transition described in Section 2.75 of this article, including reductions in staff that the commission may realize as a result of consolidated functions. The Public Utility Commission of Texas shall submit the report to the Legislative Budget Board and the governor with the legislative appropriations request for the 2014-2015 biennium.

SECTION 2.78. (a) On June 1, 2012, the following are transferred from the office of public interest counsel of the Texas Commission on Environmental Quality to the Office of Public Utility Counsel:

(1) the powers, duties, functions, programs, and activities of the office of public interest counsel of the Texas Commission on Environmental Quality relating to the representation of the public interest in matters related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article;

(2) any obligations and contracts of the office of public interest counsel of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of the office of public interest counsel of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred by this article; and

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used for purposes of the office of public interest

counsel's powers and duties directly related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(c) The memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel may agree in the memorandum of understanding under this section to transfer to the Office of Public Utility Counsel any personnel of the office of public interest counsel whose functions predominantly involve powers, duties, obligations, functions, and activities related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel shall appoint a transition team to accomplish the purposes of this section.

(f) A rule, form, policy, procedure, or decision of the office of public interest counsel of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of the Office of Public Utility Counsel and remains in effect until amended or replaced by that agency.

(g) The memorandum required by this section must be completed by April 1, 2012.

(h) The Office of Public Utility Counsel and the office of public interest counsel of the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

### ARTICLE 3. OTHER WATER AND SEWER DUTIES OF PUBLIC UTILITY COMMISSION OF TEXAS

SECTION 3.01. Section 11.002, Water Code, is amended by adding Subdivision (21) to read as follows:

(21) "Utility commission" means the Public Utility Commission of Texas.

SECTION 3.02. Section 11.041, Water Code, is amended to read as follows:

Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the utility commission a written petition showing:

(1) that the person ~~he~~ is entitled to receive or use the water;

(2) that the person ~~he~~ is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) If the petition is accompanied by a deposit of \$25, the executive director of the utility commission shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

(c) If, after preliminary investigation, the executive director of the utility commission determines that probable grounds exist for the complaint, the utility commission shall enter an order setting a time and place for a hearing on the petition.

(d) The utility commission may require the complainant to make an additional deposit or execute a bond satisfactory to the utility commission in an amount fixed by the utility commission conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the utility commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The utility commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The commission may participate in the hearing for the purpose of presenting evidence on the availability of the water requested by the petitioner. On completion of the hearing, the utility commission shall render a written decision.

(g) If, after the preliminary investigation, the executive director of the utility commission determines that no probable grounds exist for the complaint, the executive director of the utility commission shall dismiss the complaint. The utility commission may either return the deposit or pay it into the State Treasury.

SECTION 3.03. Section 12.013, Water Code, is amended to read as follows:

Sec. 12.013. RATE-FIXING POWER. (a) The utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

(b) In this section, ~~[The term]~~ "political subdivision" ~~[when used in this section]~~ means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the case being reviewed; provided, however, the utility commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) The utility commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) The utility commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) The utility commission may order a refund or assess additional charges from the date a petition for rate review is received by the utility commission of the difference between the rate actually charged and the rate fixed by the utility commission, plus interest at the statutory rate.



~~[(g) No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.]~~

~~[(h) Nothing herein contained shall affect the jurisdiction of the Public Utility Commission.]~~

(9) Redesignate SECTIONS 12 and 13 of the bill as ARTICLE 4, name the ARTICLE "GENERAL PROVISIONS", and renumber the SECTIONS appropriately.

### **Floor Amendment No. 9**

Amend **CSSB 635** by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. (a) Section 13.185(h), Water Code, is amended to read as follows:

(h) The regulatory authority may not include for ratemaking purposes:

(1) legislative advocacy expenses, whether made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) costs of processing a refund or credit under Section 13.187 of this chapter;

(3) legal expenses, including court costs and attorney's, consultant, and expert witness fees, incurred by a water and sewer utility in a contested proceeding under Section 13.187 or an appeal of that proceeding, other than legal expenses described by Section 13.084; or

(4) [(3)] any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, including executive salaries, advertising expenses, legal expenses, and civil penalties or fines.

(b) Section 13.185(h), Water Code, as amended by this section, applies only to a statement of intent for which a regulatory authority has not issued a final decision before the effective date of this section. A statement of intent for which a regulatory authority has issued a final decision before the effective date of this section is governed by the law in effect on the date that final decision was issued, and that law is continued in effect for that purpose.

(c) Notwithstanding any other provision of this Act, this section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect September 1, 2011.

### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 635** on third reading by striking:

(1) the section of the bill, as added by Floor Amendment No. 2 by Larson on second reading, that amends Subchapter C, Chapter 361, Health and Safety Code, by adding Section 361.0865; and

(2) the section of the bill, as added by Floor Amendment No. 2 by Larson on second reading, that reads:

The changes in law made by Section 361.0865, Health and Safety Code, as added by this Act, apply only to an application for the issuance, amendment, extension, or renewal of a permit that is received by the Texas Commission on Environmental

Quality on or after the effective date of this Act. An application that is received before that date is governed by the law in effect at the time the application is received, and the former law is continued in effect for that purpose.

### **Floor Amendment No. 2 on Third Reading**

Amend **CSSB 635** on third reading by striking the SECTION of the bill added by Amendment No. 9 by Dutton, amending Section 13.185(h), Water Code, and providing transition provisions for that Section.

### **Floor Amendment No. 3 on Third Reading**

Amend **CSSB 635** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 501, Health and Safety Code, is amended by adding Section 501.0234 to read as follows:

Sec. 5001.234. DENATONIUM BENZOATE ADDITIVE REQUIREMENT FOR CERTAIN PRODUCTS CONTAINING ETHYLENE GLYCOL. (a) This section applies to a product to be sold as antifreeze or engine coolant that:

(1) contains an ethylene glycol concentration greater than 10 percent by volume; and

(2) is manufactured after January 1, 2013.

(b) A manufacturer of a product described by Subsection (a) may not distribute the product for sale in this state unless the product includes denatonium benzoate in an amount of not less than 30 parts per million and not more than 50 parts per million by weight.

(c) A manufacturer of a product described by Subsection (a) shall:

(1) maintain a record of the trade name, scientific name, and active ingredients of the denatonium benzoate used to comply with Subsection (b); and

(2) on request, make the record available to the commission and the public.

(d) Subject to Subsection (e), a manufacturer, processor, distributor, recycler, or seller of a product described by Subsection (a) that includes denatonium benzoate in the concentrations required by Subsection (b) is not liable to any person for any personal injury, death, property damage, damage to the environment, including natural resources, or economic loss that results from the inclusion of denatonium benzoate in the product.

(e) The limitation on liability provided by Subsection (d) does not apply to the extent that the cause of the liability is unrelated to the inclusion of denatonium benzoate in a product described by Subsection (a).

(f) This section does not exempt a manufacturer of denatonium benzoate from liability under other law.

(g) A political subdivision of this state may not adopt or enforce an ordinance, regulation, or policy that is inconsistent with or more restrictive than this section.

(h) This section does not apply to the sale of:

(1) a motor vehicle that contains a product described by Subsection (a); or

(2) a container sold at wholesale that contains 55 gallons or more of antifreeze or engine coolant.

(i) The Commission may adopt rules for the implementation.

(j) In this SECTION, "Commission" means the Texas Commission on Environmental Quality.

SECTION \_\_\_\_\_. A manufacturer is required to comply with Section 501.0234, Health and Safety Code, as added by this Act, only after January 1, 2013.

The amendments were read.

Senator Nichols moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 635** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Nichols, Chair; Hegar, Patrick, Gallegos, and Fraser.

### SENATE BILL 408 WITH HOUSE AMENDMENT

Senator Estes called **SB 408** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### Amendment

Amend **SB 408** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to inspection of and the operation of watercraft on the John Graves Scenic Riverway; providing for the imposition of a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (b), Section 26.555, Water Code, is amended to read as follows:

(b) A ~~[The]~~ visual inspection from an aircraft flying over the John Graves Scenic Riverway ~~[inspections and the drawing of water samples]~~ must be conducted at least once in a winter month and at least once in a summer month. A ~~[The]~~ visual inspection and the drawing of water samples for testing ~~[inspections]~~ must be conducted ~~[both]~~ from the surface of the ~~[John Graves Scenic Riverway and from an aircraft flying over the]~~ riverway at least once in a spring month and at least once in a fall month.

SECTION 2. Subchapter M, Chapter 26, Water Code, is amended by adding Section 26.563 to read as follows:

Sec. 26.563. CERTAIN CRAFT PROHIBITED. (a) The commission by rule shall prohibit the commercial or recreational use of the following craft on the waters of the John Graves Scenic Riverway:

(1) airboats, fanboats, and similar shallow draft watercraft that use an aircraft-type propeller for propulsion; and

(2) hovercraft.

(b) A rule adopted under this section must allow for the operation of craft described by Subsection (a) for:

(1) a visual inspection conducted under Section 26.555; or

(2) law enforcement purposes.

(c) A person who operates a hovercraft or watercraft in violation of a rule adopted under this section commits an offense. An offense under this section is a Class C misdemeanor. Any peace officer, including a law enforcement officer commissioned by the Parks and Wildlife Commission, may enforce this section.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Estes moved to concur in the House amendment to **SB 408**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### RECESS

On motion of Senator Whitmire, the Senate at 2:47 p.m. recessed until 4:30 p.m. today.

### AFTER RECESS

The Senate met at 4:48 p.m. and was called to order by President Pro Tempore Ogden.

### CONFERENCE COMMITTEE ON HOUSE BILL 2048

Senator Deuell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2048** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2048** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Deuell, Chair; Hinojosa, Nelson, Whitmire, and Seliger.

### SENATE BILL 158 WITH HOUSE AMENDMENTS

Senator Williams called **SB 158** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Floor Amendment No. 1**

Amend **SB 158** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1285 to read as follows:

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) This section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) or (2), is not required to register under this subchapter.

(b) A person commits an offense if the person knowingly:

(1) converts to the person's own use or benefit a controlled substance to which the person has access by virtue of the person's profession or employment; or

(2) diverts to the unlawful use or benefit of another person a controlled substance to which the person has access by virtue of the person's profession or employment.

(c) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

**Floor Amendment No. 2**

Amend **SB 158** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 71.02(a), Penal Code, as amended by Chapters 153 (**SB 2225**), 1130 (**HB 2086**), and 1357 (**SB 554**), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10; ~~[or]~~

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) ~~(14)~~ any offense under Section 42.10; or

(16) ~~(14)~~ any offense under Section 46.06(a)(1) or 46.14.

SECTION \_\_\_\_\_. Sections 71.02(b) and (c), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, are reenacted to read as follows:

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

SECTION \_\_\_\_\_. Section 71.05(a), Penal Code, as amended by Chapters 761 (H.B. 3544) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, is reenacted and amended to read as follows:

(a) It is an affirmative defense to prosecution under Section 71.02 that under circumstances manifesting a voluntary and complete renunciation of the actor's ~~[his]~~ criminal objective, the actor withdrew from the combination before commission of an offense listed in ~~[Subsection (a) of]~~ Section 71.02(a) ~~[71.02]~~ and took further affirmative action that prevented the commission of the offense.

SECTION \_\_\_\_\_. Section 71.05(c), Penal Code, is amended to read as follows:

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in ~~[Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of]~~ Section 71.02(a) ~~[71.02 of this code]~~ and made substantial effort to prevent the commission of an offense listed in ~~[Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of]~~ Section 71.02(a) ~~[71.02 of this code]~~ shall be admissible as mitigation at the hearing on punishment if the actor ~~[he]~~ has been found guilty under Section 71.02 ~~[of this code]~~, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 ~~[of this code]~~.

SECTION \_\_\_\_\_. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

### **Floor Amendment No. 2 on Third Reading**

Amend **SB 158** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 48, Penal Code, is amended by adding Section 48.03 to read as follows:

Sec. 48.03. PROHIBITION RELATING TO SALE OR DELIVERY OF SALVIA DIVINORUM EXTRACT. (a) A person commits an offense if the person, with criminal negligence, sells, delivers, or causes to be sold or delivered an extract of salvia divinorum, Salvinorin A, or a product containing an extract of salvia divinorum or Salvinorin A to another person.

(b) An offense under this section is a Class B misdemeanor.

The amendments were read.

Senator Williams moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 158** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Huffman, Hinojosa, Eltife, and West.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2357**

Senator Williams called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2357** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2357** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Wentworth, Nichols, Lucio, and Watson.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2734**

Senator Williams called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2734** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2734** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Hinojosa, Wentworth, Shapiro, and Nichols.

### **SENATE BILL 1664 WITH HOUSE AMENDMENTS**

Senator Eltife, on behalf of Senator Duncan, called **SB 1664** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Amendment**

Amend **SB 1664** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED**

#### **AN ACT**

relating to the powers and duties of and contributions to and benefits from the systems and programs administered by the Employees Retirement System of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 609, Government Code, is amended by adding Section 609.015 to read as follows:

Sec. 609.015. BENEFICIARY CAUSING DEATH OF PARTICIPATING EMPLOYEE. (a) Any benefits, funds, or account balances payable on the death of a participating employee may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) The plan is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the plan may delay payment of any benefits, funds, or account balances payable on the death of a participating employee pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a participating employee if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the participating employee, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the participating employee and no appeal of the judgement is pending and the time provided for appeal has expired.

SECTION 2. Subsection (c), Section 659.140, Government Code, is amended to read as follows:



- (c) The ~~[Each member of the]~~ state policy committee must:
- (1) be composed of employees and retired state employees receiving benefits under Chapter 814; and
  - (2) [a state employee. The membership must] represent employees at different levels of employee classification.

SECTION 3. Subsection (b), Section 659.143, Government Code, is amended to read as follows:

(b) The presiding officer of a local employee committee shall recruit at least five but not more than 10 additional members. The members must represent different levels of employee classification. One or more members may be retired state employees receiving retirement benefits under Chapter 814.

SECTION 4. Section 811.010, Government Code, as added by Chapter 232 (S.B. 1589), Acts of the 81st Legislature, Regular Session, 2009, is redesignated as Section 811.012, Government Code, and amended to read as follows:

Sec. 811.012 ~~[811.010]~~. PROVISION OF CERTAIN INFORMATION TO COMPTROLLER. (a) Not later than June 1, 2016, and once every five years after that date ~~[of each year]~~, the retirement system shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each member, retiree, and beneficiary from the retirement system's records.

(b) Information provided to the comptroller under this section is confidential and may not be disclosed to the public.

(c) The retirement system shall provide the information in the format prescribed by rule of the comptroller.

SECTION 5. Section 813.404, Government Code, is amended to read as follows:

Sec. 813.404. CONTRIBUTIONS FOR SERVICE NOT PREVIOUSLY ESTABLISHED. For each month of membership, military, or equivalent membership service not previously credited in the retirement system, a member claiming credit in the elected class shall pay a contribution in an amount equal to the greater of:

(1) eight percent of the monthly salary paid to members of the legislature at the time the credit is established; or

(2) the appropriate member contribution provided by Section 815.402 for ~~[six percent of the monthly state salary paid to]~~ a person who holds, at the time the credit is established, the office for which credit is sought.

SECTION 6. Subsection (a), Section 813.505, Government Code, is amended to read as follows:

(a) A member claiming credit in the employee class for membership service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of:

(1) the appropriate member contribution provided by Section 815.402 ~~[six percent of the member's monthly state compensation]~~ for the service during the time for which credit is sought; or

(2) \$18.

SECTION 7. Subsections (a), (c), (d), and (e), Section 814.007, Government Code, are amended to read as follows:

(a) Any benefits, funds, or account balances ~~[A benefit]~~ payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused ~~[causing]~~ that death but instead are ~~[is]~~ payable as if the convicted person had predeceased the decedent.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances ~~[a benefit]~~ payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other ~~[of]~~ legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused ~~[causing]~~ the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated,~~[;]~~ and

~~[(2) has]~~ no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 8. The heading to Section 814.009, Government Code, is amended to read as follows:

Sec. 814.009. DEDUCTION FROM ANNUITY FOR STATE EMPLOYEE ORGANIZATION.

SECTION 9. Subchapter A, Chapter 814, Government Code, is amended by adding Sections 814.0095 and 814.0096 to read as follows:

Sec. 814.0095. CHARITABLE DEDUCTION FROM ANNUITY. (a) Except as provided by Section 814.0096(c), a person who receives an annuity under this subchapter may, on a printed or electronic form filed with the retirement system, authorize the retirement system to deduct from the person's monthly annuity payment the amount of a contribution to the state employee charitable campaign in the manner and for the same purposes for which a state employee may authorize deductions to that campaign under Subchapter I, Chapter 659.

(b) An authorization under this section must direct the board of trustees to deposit the deducted funds with the comptroller for distribution as required by Section 659.132(g) in the same manner in which a state employee's deduction is distributed.

(c) An authorization under this section remains in effect for the period described by Section 659.137 unless the person revokes the authorization by giving notice to the board of trustees.

(d) The board of trustees may adopt rules to administer this section. Any rules adopted must be consistent with the comptroller's rules related to the state employee charitable campaign.

Sec. 814.0096. COORDINATION WITH STATE EMPLOYEE CHARITABLE CAMPAIGN POLICY COMMITTEE. (a) The board of trustees and the state employee charitable campaign policy committee established under Section 659.140 shall coordinate responsibility for the administration of charitable deductions from annuity payments to the state employee charitable campaign under Section 814.0095.

(b) The state employee charitable campaign policy committee is authorized to approve a budget that includes funding for as many of the expenses incurred by the retirement system associated with the implementation and administration of annuitants' participation in the state employee charitable campaign as is practicable, including notification of annuitants.

(c) Except as provided by this subsection, the board of trustees shall charge an administrative fee to cover any costs not paid under Subsection (b) in the implementation of Section 814.0095 to the charitable organizations participating in the state employee charitable campaign conducted under that section in the same proportion that the contributions to that charitable organization bear to the total of contributions in that campaign. The board of trustees shall determine the most efficient and effective method of collecting the administrative fee and shall adopt rules for the implementation of this subsection.

(d) If necessary, the board of trustees and the state employee charitable campaign policy committee may make the annuity deduction authorization under Section 814.0095(a) available in stages to subgroups of the retirement system's annuity recipients as money becomes available to cover the expenses under Subsection (b).

SECTION 10. Subsection (d), Section 814.104, Government Code, is amended to read as follows:

(d) Except as provided by Section 814.102 or by rule adopted under Section 813.304(d) or 803.202(a)(2), a member who was not a member on the date hired, was hired on or after September 1, 2009, and has service credit in the retirement system is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 65 years old and has at least 10 years of service credit in the employee class; or

(2) has at least 10 [~~5~~] years of service credit in the employee class and the sum of the member's age and amount of service credit in the employee class, including months of age and credit, equals or exceeds the number 80.

SECTION 11. Subsection (d), Section 814.1075, Government Code, is amended to read as follows:

(d) The standard combined service retirement annuity that is payable under this section is based on retirement at either the age of 55 or the age at which the sum of the member's age and amount of service credit in the employee class equals or exceeds the number 80. The annuity of a law enforcement or custodial officer who retires before reaching the age of 55 under any eligibility criteria is actuarially reduced by

five percent for each year the member retires before the member reaches age 55, with a maximum possible reduction of 25 percent. The actuarial reduction described by this section is in addition to any other actuarial reduction required by law.

SECTION 12. Section 815.303, Government Code, is amended to read as follows:

Sec. 815.303. SECURITIES LENDING. (a) The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's securities and to lend the securities under rules or policies adopted by the board of trustees and as required by this section.

(b) To be eligible to lend securities under this section, a bank or brokerage firm must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from borrower default in its operation of a securities loan program for the system's securities; and

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian or securities lending agent collateral in the form of cash or ~~[United States government]~~ securities that are obligations of the United States or agencies or instrumentalities of the United States in an amount equal to but not less than 100 percent of the market value, from time to time, as determined by the retirement system, of the loaned securities.

SECTION 13. Section 815.402, Government Code, is amended by adding Subsections (a-1) and (h-1) to read as follows:

(a-1) Notwithstanding Subsection (a)(1), if the state contribution to the retirement system is computed using a percentage less than 6.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

(h-1) Notwithstanding Subsection (h), if the state contribution to the law enforcement and custodial officer supplemental retirement fund is computed using a percentage less than 0.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

SECTION 14. Subchapter D, Chapter 834, Government Code, is amended by adding Section 834.305 to read as follows:

Sec. 834.305. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) Any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 15. Subchapter D, Chapter 839, Government Code, is amended by adding Section 839.306 to read as follows:

Sec. 839.306. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) Any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 16. Subsection (a), Section 1551.004, Insurance Code, is amended to read as follows:

(a) In this chapter, "dependent" with respect to an individual eligible to participate in the group benefits program [~~under Section 1551.101 or 1551.102~~] means the individual's:

(1) spouse;

(2) unmarried child younger than 26 [~~25~~] years of age;

(3) child of any age who the board of trustees determines lives with or has the child's care provided by the individual on a regular basis if:

(A) the child is mentally [~~retarded~~] or physically incapacitated to the extent that the child is dependent on the individual for care or support, as determined by the board of trustees;

(B) the child's coverage under this chapter has not lapsed; and

(C) the child is at least 26 [~~25~~] years old and was enrolled as a participant in the health benefits coverage under the group benefits program on the date of the child's 26th [~~25th~~] birthday;

(4) child of any age who is unmarried, for purposes of health benefit coverage under this chapter, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its subsequent amendments; and

(5) ward, as that term is defined by Section 601, Texas Probate Code, who is 26 years of age or younger.

SECTION 17. Subchapter B, Chapter 1551, Insurance Code, is amended by adding Section 1551.068 to read as follows:

Sec. 1551.068. QUALIFICATION OF GROUP BENEFITS PROGRAM. Notwithstanding any provision of this chapter or any other law, it is intended that the provisions of this chapter be construed and administered in a manner that coverages under the group benefits program will be considered in compliance with applicable federal law. The board of trustees may adopt rules that modify the coverage provided under the program by adding, deleting, or changing a provision of the program, including rules that modify eligibility and enrollment requirements and the benefits available under the program.

SECTION 18. Section 1551.220, Insurance Code, is amended to read as follows:

Sec. 1551.220. BENEFICIARY CAUSING DEATH OF PARTICIPANT OR BENEFICIARY OF PARTICIPANT. (a) Any benefits, funds, or account balances [~~A benefit~~] payable on the death of a participant or the beneficiary of a participant in the

group benefits program may not be paid to a person convicted of or adjudicated as having caused ~~[causing]~~ that death but instead are ~~[is]~~ payable as if the convicted person had predeceased the decedent.

(b) The Employees Retirement System of Texas is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances ~~[a benefit]~~ payable on the death of a participant or beneficiary of a participant pending the results of a criminal investigation or civil proceeding and other ~~[of]~~ legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of or adjudicated as having caused ~~[causing]~~ the death of a participant or beneficiary of a participant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the participant or beneficiary of a participant, regardless of whether sentence is imposed or probated,~~[;]~~ and

~~[(2) has]~~ no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 19. Subchapter E, Chapter 1551, Insurance Code, is amended by adding Section 1551.226 to read as follows:

Sec. 1551.226. TOBACCO CESSATION COVERAGE. (a) The board of trustees shall develop a plan for providing under any health benefit plan provided under the group benefits program tobacco cessation coverage for participants.

(b) The plan developed under Subsection (a) must include coverage for prescription drugs that aid participants in ceasing the use of tobacco products.

SECTION 20. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3075 to read as follows:

Sec. 1551.3075. TOBACCO USER PREMIUM DIFFERENTIAL. (a) The board of trustees shall assess each participant in a health benefit plan provided under the group benefits program who uses one or more tobacco products a tobacco user premium differential, to be paid in monthly installments. Except as provided by Subsection (b), the board of trustees shall determine the amount of the monthly installments of the premium differential.

(b) If the General Appropriations Act for a state fiscal biennium sets the amount of the monthly installments of the tobacco user premium differential for that biennium, the board of trustees shall assess the premium differential during that biennium in the amount prescribed by the General Appropriations Act.

SECTION 21. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3076 to read as follows:

Sec. 1551.3076. EMPLOYER ENROLLMENT FEE. (a) The board of trustees shall assess each employer whose employees participate in the group benefits program an employer enrollment fee in an amount not to exceed a percentage of the employer's total payroll, as determined by the General Appropriations Act.

(b) The board of trustees shall deposit the enrollment fees to the credit of the employees life, accident, and health insurance and benefits fund to be used for the purposes specified by Section 1551.401.

SECTION 22. Section 1551.314, Insurance Code, is amended to read as follows:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be:

(1) made for coverages under this chapter selected by an individual who receives a state contribution~~[, other than as a spouse, dependent, or beneficiary,]~~ for coverages under a group benefits program provided by another state health plan or by an institution of higher education, as defined by Section 61.003, Education Code; or

(2) made for or used to pay a tobacco user premium differential assessed under Section 1551.3075.

SECTION 23. The change in law made by Sections 609.015, 834.305, and 839.306, Government Code, as added by this Act, and Sections 814.007, Government Code, and 1551.220, Insurance Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 24. (a) The board of trustees of the Employees Retirement System of Texas, in cooperation with the comptroller of public accounts and the state employee charitable campaign policy committee established under Section 659.140, Government Code, as amended by this Act, may adopt rules to implement Sections 814.0095 and 814.0096, Government Code, as added by this Act.

(b) The board of trustees of the Employees Retirement System of Texas by rule shall designate the start date on which annuity deductions begin under Sections 814.0095 and 814.0096, Government Code, as added by this Act.

SECTION 25. (a) Subsection (d), Section 814.104, Government Code, as amended by this Act, applies only to a member of the Employees Retirement System of Texas who retires on or after the effective date of this Act.

(b) A member of the Employees Retirement System of Texas who retires before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 26. The board of trustees of the Employees Retirement System of Texas shall develop and fully implement the plan for providing tobacco cessation coverage as required by Section 1551.226, Insurance Code, as added by this Act, and implement the tobacco user premium differential required under Section 1551.3075, Insurance Code, as added by this Act, not later than January 1, 2012.

SECTION 27. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 28. This Act takes effect September 1, 2011.



**Floor Amendment No. 1**

Amend **CSSB 1664** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 815.317, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The comptroller shall deposit fees collected under Section 133.102(e)(7), Local Government Code, to the credit of the law enforcement and custodial officer supplemental retirement fund.

(b) Section 133.102(e), Local Government Code, is amended to read as follows:

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

- |  |                     |
|--|---------------------|
| (1) abused children's counseling   | 0.0088 percent;     |
| (2) crime stoppers assistance  | 0.2581 percent;     |
| (3) breath alcohol testing   | 0.5507 percent;     |
| (4) Bill Blackwood Law Enforcement Management Institute  | 2.1683 percent;     |
| (5) law enforcement officers standards and education   | 5.0034 percent;     |
| (6) comprehensive rehabilitation   | 5.3218 percent;     |
| (7) law enforcement and custodial officer supplemental retirement fund   |                     |
| <del>[operator's and chauffeur's license]</del>  | 11.1426 percent;    |
| (8) criminal justice planning  | 12.5537 percent;    |
| (9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University | 1.2090 percent;     |
| (10) compensation to victims of crime fund   | 37.6338 percent;    |
| (11) fugitive apprehension account   | 12.0904 percent;    |
| (12) judicial and court personnel training fund  | 4.8362 percent;     |
| (13) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center Account                           | 1.2090 percent; and |
| (14) fair defense account  | 6.0143 percent.     |

(c) Notwithstanding any other provision of this Act, this section takes effect September 1, 2013.

**Floor Amendment No. 2**

Amend **CSSB 1664** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 814, Government Code, is amended by adding Section 814.1021 to read as follows:

Sec. 814.1021. CERTAIN ELECTED MEMBERS INELIGIBLE FOR RETIREMENT ANNUITY. (a) In this section, "qualifying felony" means any felony involving:

- (1) bribery;
- (2) the embezzlement, extortion, or other theft of public money;
- (3) perjury; or
- (4) conspiracy or the attempt to commit any of the above crimes.

(b) This section applies only to a member of the elected class of the retirement system as described by Section 812.002(a)(1) or (2).

(c) Except as provided by Subsection (d), a member is not eligible to receive a service retirement annuity for service credit in the elected class under the retirement system if the member is convicted of a qualifying felony committed while in office and arising directly from the official duties of that elected office.

(d) The retirement system shall suspend payments of an annuity to a person ineligible to receive the annuity under Subsection (c). A person whose conviction is overturned on appeal or who meets either of the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and

(2) may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (e).

(e) A member who is not eligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the member's retirement annuity contributions, including interest earned on those contributions.

(f) Benefits payable to an alternate payee under Chapter 804 who is recognized by a domestic relations order established before September 1, 2011, are not affected by a member's ineligibility to receive a retirement annuity under Subsection (c).

(g) Ineligibility for a retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(h) The board of trustees of the retirement system shall adopt rules and procedures to implement this section.

SECTION \_\_\_\_\_. Article 6220, Revised Statutes, is repealed.

SECTION \_\_\_\_\_. (a) Section 814.1021, Government Code, as added by this Act, applies only to a member of the Employees Retirement System of Texas who is or was a member of the state legislature or holds or has held a statewide elected office and, on or after the effective date of this Act, commits an offense that is a qualifying felony as defined by that section. A person who commits a qualifying felony before the effective date of this Act is subject to the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(b) For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

### **Floor Amendment No. 3**

Amend the Johnson amendment to **CSSB 1664** as follows:

Add subsection (i) to Sec. 814.1021:

(i) Nothing in this section shall impair or affect a spouse's community property right in any accrued benefit.

The amendments were read.

Senator Eltife, on behalf of Senator Duncan, moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1664** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Williams, Ellis, Van de Putte, and Deuell.

### **SENATE BILL 40 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 40** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Amendment**

Amend **SB 40** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to the composition and functions of the Texas Guaranteed Student Loan Corporation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 57.01 and 57.11, Education Code, are amended to read as follows:

Sec. 57.01. DECLARATION OF POLICY. The legislature, giving due consideration to the historical and continuing interest of the people of the State of Texas in encouraging deserving and qualified persons to realize their aspirations for education beyond high school, finds and declares that postsecondary education for qualified Texans ~~[those]~~ who desire to pursue such ~~[an]~~ education ~~[and are properly qualified therefor]~~ is important to the welfare and security of this state and the nation and, consequently, is an important public purpose. The legislature finds and declares that the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of the individual's ~~[his or her]~~ capabilities and only when financial barriers to the individual's ~~[his or her]~~ economic, social, and educational goals are removed. It is, therefore, the purpose of this chapter to establish the Texas Guaranteed Student Loan Corporation to:

(1) administer a guaranteed student loan program, student financial aid programs, and other student loan programs to assist qualified ~~[Texas]~~ students in this state and across the nation in receiving a postsecondary education in this state or elsewhere in the nation; ~~[and]~~

(2) assist institutions of higher education by providing ~~[provide]~~ necessary and desirable services related to financial aid and student ~~[the]~~ loan programs; and

(3) participate in revenue-generating activities related to higher education student financial aid and student loan programs to the extent the activities support the corporation's primary purposes under Subdivisions (1) and (2) ~~[program, including cooperative awareness efforts with appropriate educational and civic associations designed to disseminate postsecondary education awareness information, including information regarding student financial aid and the Federal Family Education Loan Program, and other relevant topics including the prevention of student loan default].~~

Sec. 57.11. TEXAS GUARANTEED STUDENT LOAN CORPORATION. (a) The Texas Guaranteed Student Loan Corporation is created to administer the programs authorized by this chapter.

(b) The corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under Chapter 22, Business Organizations Code ~~[the Texas Non-Profit Corporation Act (Article 1396 1.01 et seq., Vernon's Texas Civil Statutes)].~~

(c) ~~[(b)]~~ Except as otherwise provided by law, all expenses of the corporation shall be paid from revenue ~~[income]~~ of the corporation.

(d) ~~[(c)]~~ The corporation is subject to Chapters ~~[Chapter]~~ 551 and 552, Government Code.

(e) ~~[(d)]~~ Student loan borrower information collected, assembled, or maintained by the corporation is confidential and is not subject to disclosure under Chapter 552, Government Code.

SECTION 2. Section 57.12(a), Education Code, is amended to read as follows:

(a) The Texas Guaranteed Student Loan Corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 2013 ~~[2017]~~.

SECTION 3. Section 57.1311(b), Education Code, is amended to read as follows:

(b) The training program must provide the person with information regarding:

(1) the provisions of this chapter, including the policies developed under Section 57.19(i) regarding the separation of policymaking and management responsibilities, and the corporation's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the corporation;

(3) the requirements of laws relating to open meetings, public information, and conflicts of interest; and

(4) any applicable ethics policies adopted by the corporation or the Texas Ethics Commission.

SECTION 4. Sections 57.13(a) and (b), Education Code, are amended to read as follows:

(a) The corporation is governed by a board of nine ~~[11]~~ directors in accordance with this section.

(b) The governor, with the advice and consent of the senate, shall appoint the ~~[10]~~ members of ~~[to]~~ the board as follows:

(1) four ~~[five]~~ members who must have knowledge of or experience in finance, including management of funds or business operations;

(2) one member who must be a student enrolled at a postsecondary educational institution for the number of credit hours required by the institution to be classified as a full-time student of the institution; and

(3) four members who must be members the faculty or administration of a ~~[an-eligible]~~ postsecondary educational institution that is an eligible institution for purposes of the Higher Education Act of 1965, as amended, ~~as defined by Section 57.46~~.

SECTION 5. Section 57.131(d), Education Code, is amended to read as follows:

(d) A person may not be one of the members of the board required by Section 57.13(b) to have knowledge of or experience in finance if the person:

(1) is a member of the board of directors or an employee of a ~~[an-eligible]~~ lender that:

(A) participates in a ~~[the-guaranteed]~~ student loan program; or

(B) originates, makes, holds, services, or has a pecuniary interest of any kind in higher education student loans of any nature; or

(2) owns:

(A) 10 percent or more of the voting stock or shares of a business entity that engages in an activity described by Subdivision (1); or

(B) \$15,000 or more of the fair market value of a business entity that engages in an activity described by Subdivision (1).

SECTION 6. Section 57.14, Education Code, is amended to read as follows:

Sec. 57.14. DIRECTORS' TERMS OF OFFICE. Members of the board ~~[appointed by the governor]~~ serve for terms of six years, with the terms of three ~~[or four]~~ members~~[-as applicable,]~~ expiring on January 31 of each odd-numbered year.

SECTION 7. Section 57.17, Education Code, is amended to read as follows:

Sec. 57.17. OFFICERS. The governor shall designate the chairman from among the board's membership. The board shall elect from among its members a ~~[chairman,]~~ vice-chairman~~[,]~~ and other officers that the board considers necessary. The chairman and vice-chairman serve for a term of one year and may be redesignated or reelected, as applicable.

SECTION 8. Subchapter B, Chapter 57, Education Code, is amended by adding Section 57.181 to read as follows:

Sec. 57.181. MEETING BY TELEPHONE CONFERENCE CALL; QUORUM PRESENT AT ONE LOCATION REQUIRED. (a) Notwithstanding Chapter 551, Government Code, the board or a board committee may hold a meeting by telephone conference call only if a quorum of the board or board committee, as applicable, is physically present at one location of the meeting.

(b) A telephone conference call meeting is subject to the notice requirements applicable to other meetings, except that the meeting notice must also specify:

(1) the location of the meeting where a quorum of the board or board committee, as applicable, will be physically present; and

(2) the intent to have a quorum present at that location.

(c) The meeting location where a quorum is physically present must be open to the public during the open portions of a telephone conference call meeting. The open portions of the meeting must be audible to the public at the location where the quorum is present and be tape-recorded at that location. The tape recording must be made available to the public.

(d) The meeting location where a quorum is physically present must provide two-way communication during the entire telephone conference call meeting, and the identification of each party to the telephone conference call must be clearly stated before the party speaks.

(e) A member of the board who participates in a board or board committee meeting by telephone conference call but is not physically present at the meeting location where a quorum is physically present is not considered to be absent from the meeting for any purpose. The vote of a member of the board who participates in a board or board committee meeting by telephone conference call is counted for the purpose of determining the number of votes cast on a motion or other proposition before the board or board committee.

(f) A member of the board may participate remotely by telephone conference call instead of by being physically present at the location of a board meeting for not more than one board meeting per calendar year. A board member who participates remotely in any portion of a board meeting by telephone conference call is considered to have participated in the entire board meeting by telephone conference call. For purposes of this subsection, remote participation by telephone conference call in a meeting of a board committee does not count as remote participation by telephone conference call in a board meeting regardless of whether:

(1) a quorum of the full board attends the board committee meeting; or

(2) notice of the board committee meeting is also posted as notice of a board meeting.

(g) A person who is not a member of the board may not speak at the board or board committee meeting from a remote location by telephone conference call, except as provided by Section 551.129, Government Code.

(h) The authority provided by this section is in addition to the authority provided by Section 551.125, Government Code.

SECTION 9. Section 57.19(d), Education Code, is amended to read as follows:

(d) The president or the president's designee shall develop a ~~[an intra-agency]~~ career ladder program for the corporation. The program shall require internal corporate ~~[intra-agency]~~ postings of all nonentry level positions concurrently with any public posting.

SECTION 10. Section 57.20(a), Education Code, is amended to read as follows:

(a) The corporation shall appoint an ombudsman ~~[maintain a system]~~ to promptly and efficiently act on complaints filed with the corporation. The ombudsman ~~[corporation]~~ shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

SECTION 11. Sections 57.21(a) and (c), Education Code, are amended to read as follows:

(a) The corporation shall take an active role in coordinating, facilitating, promoting, and providing assistance and support to:

(1) programs that focus on and disseminate information regarding postsecondary education awareness and the availability of student financial aid ~~designed to make available to the residents of this state~~ ~~concerning~~ ~~including the Federal Family Education Loan Program,~~ and that ~~to~~ assist families in obtaining ~~needed~~ postsecondary education financing;

(2) programs designed to assist students, families, borrowers, and schools in preventing student loan default throughout the life of the loan, provided that such programs are required as a part of a guaranty agency's obligation under the Federal Family Education Loan Program established by the Higher Education Act of 1965 (20 U.S.C. Section 1071 et seq.), or are funded by statutory or regulatory mandate, compensation, grant, contract, award, or other appropriate means; and

(3) programs designed to increase student retention and graduation rates in postsecondary education.

(c) To the extent practicable, each ~~Each~~ state agency that conducts higher education and financial aid outreach activities shall enter into a memorandum of understanding with the corporation. The memorandum of understanding may ~~must~~ outline how the corporation and the state agency will coordinate outreach activities to maximize resources and avoid duplication.

SECTION 12. The heading to Section 57.22, Education Code, is amended to read as follows:

Sec. 57.22. APPLICATION OF BUSINESS ORGANIZATIONS CODE ~~THE TEXAS NON-PROFIT CORPORATION ACT~~.

SECTION 13. Section 57.22(a), Education Code, is amended to read as follows:

(a) The corporation is subject to Chapter 22, Business Organizations Code ~~the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)~~, except that:

(1) the corporation may not make donations for the public welfare or for charitable or scientific purposes or in aid of war activities;

(2) the corporation is not required to file articles of incorporation;

(3) the corporation is not subject to voluntary or involuntary dissolution;

(4) the corporation may not be placed in receivership; and

(5) the corporation is not required to make reports to the secretary of state under Section 22.357, Business Organizations Code ~~Article 9.01 of that Act~~.

SECTION 14. Section 57.24, Education Code, is amended to read as follows:

Sec. 57.24. AUTHORITY TO PARTICIPATE IN OTHER REVENUE-GENERATING ACTIVITIES; LIMITATIONS. (a) The corporation may participate in a revenue-generating activity by entering into a contract with the United States Department of Education, with this state or any agency, instrumentality, or political subdivision of this state, with any eligible institution as defined by Section 435 of the Higher Education Act of 1965 (20 U.S.C. Section 1085), as amended, that is eligible to participate in a program under Title IV of that Act, with any guaranty agency as defined by Section 435 of that Act (20 U.S.C. Section 1085), or with any

entity to which the United States Department of Education has awarded one or more contracts to provide services under Title IV of that Act ~~[that is consistent with the corporation's purposes]~~ if the board determines that ~~[the revenue from the activity]~~:

(1) ~~[is sufficient to cover the costs of]~~ the activity is consistent with the corporation's purposes described by Section 57.01; ~~[and]~~

(2) revenue from the activity is sufficient to cover the costs of the activity, including the opportunity costs of any invested capital, within a defined period of time determined by the board for purposes of this section; and

(3) revenue from the activity will enable the corporation to support educational purposes under Section 57.211 ~~[may contribute to a reduction in the insurance premium paid by students under Section 57.43 of this code]~~.

(b) The corporation may enter into a contract with the United States Department of Education under Subsection (a) alone or in concert with any of the entities with which the corporation may enter into a contract under that subsection.

(c) If, under Subsection (a) ~~[of this section]~~, the board authorizes the corporation to perform additional services, the corporation may not require postsecondary educational institutions or students to use those services unless required by state or federal law.

(d) If, under Subsection (a), the board authorizes the corporation to perform debt collection, default aversion, financial literacy, exit counseling, or loan servicing, the corporation may perform those services only in relation to higher education student loans.

(e) The corporation shall submit a written report to the legislature and the Legislative Budget Board not later than December 1 of each even-numbered year regarding the corporation's participation in revenue-generating activities under this section. The report must:

(1) include the amounts of revenue from and expenses associated with the activities;

(2) demonstrate how that revenue is used for the support of educational purposes under Section 57.211; and

(3) certify:

(A) the reasonable and necessary amount of operating funds under Section 57.71 required to fulfill the corporation's responsibilities under Section 57.41(a); and

(B) the amount of excess operating funds under Section 57.71.

(f) Contracts entered into by the corporation in pursuit of the corporation's primary purposes described by Sections 57.01(1) and (2) do not constitute revenue-generating activities under this section and are not subject to the requirements prescribed by this section.

SECTION 15. Section 57.41(a), Education Code, is amended to read as follows:

(a) The corporation shall serve as the designated guarantee agency under the Federal Family Education Loan Program in accordance with ~~[loans made to eligible borrowers by eligible lenders as provided by the federal guaranteed student loan program under]~~ the Higher Education Act of 1965, 20 U.S.C. Section ~~[See.]~~ 1001 et seq., as amended, regulations adopted under that Act, and other applicable federal law.

SECTION 16. Section 57.461, Education Code, is amended to read as follows:



Sec. 57.461. [~~POSTSECONDARY EDUCATIONAL INSTITUTIONS AND LENDER~~] ADVISORY COMMITTEES. [~~(a)~~] The corporation shall establish advisory committees as the board considers appropriate [÷

~~[(1) an advisory committee that is composed of 15 members who represent the postsecondary educational institutions that participate in the corporation's guaranteed student loan program; and~~

~~[(2) an advisory committee that is composed of 12 members including:~~

~~[(A) one member who represents the Texas Higher Education Coordinating Board; and~~

~~[(B) 11 members who represent lenders that participate in the corporation's guaranteed student loan program].~~

~~[(b) The board shall appoint advisory committee members on the recommendation of the president.~~

~~[(c) The board may establish other advisory committees as the board considers necessary.~~

~~[(d) The board shall:~~

~~[(1) specify each advisory committee's purpose and duties; and~~

~~[(2) require each committee to report to the board in a manner specified by the board relating to each committee's activities and work results.]~~

SECTION 17. Sections 57.47(a), (b), and (d), Education Code, are amended to read as follows:

(a) If a student borrower defaults on a loan and the corporation is required to honor the guarantee, the corporation may [~~or the Texas Higher Education Coordinating Board shall~~] bring suit against the defaulting party in accordance with the requirements of the Higher Education Act of 1965, 20 U.S.C. Section [~~See~~] 1001 et seq., as amended.

(b) A suit against a defaulting party under this section may be brought in the county in which the defaulting person resides, in which the lender is located, or in Travis or Williamson County.

(d) Notwithstanding any other law, if the corporation [~~or the Texas Higher Education Coordinating Board~~] brings suit against a defaulting party under this section, the corporation [~~or the coordinating board, as appropriate,~~] shall pay 50 percent of the filing fee or other costs of court taxed and collected in advance that are in effect on the date on which the suit is filed. If the defaulting borrower prevails in the suit filed under this section, the corporation [~~or the coordinating board, as appropriate,~~] shall pay the remaining 50 percent of the statutory filing fee on the date of the final disposition of the suit. If the corporation [~~or coordinating board~~] prevails in the suit:

(1) the judgment shall find the defaulting borrower liable to the corporation [~~or the coordinating board, as appropriate,~~] for the amount of the filing fee; and

(2) the corporation [~~or coordinating board, as appropriate,~~] shall pay the remaining 50 percent of the statutory filing fee not later than one week after the date on which the defaulting borrower pays to the corporation [~~or coordinating board, as appropriate,~~] the full amount, including the filing fee, for which the borrower is liable to the corporation [~~or coordinating board~~].

SECTION 18. Sections 57.481(a), (b), and (c), Education Code, are amended to read as follows:

(a) ~~[In this section, "loan default rate" means the rate at which student borrowers default on loans guaranteed by the corporation as determined by the corporation in compliance with federal guidelines.~~

~~[(b)]~~ The corporation shall take a comprehensive and ~~[an]~~ active role in coordinating, facilitating, and providing technical assistance on guaranteed student loan default prevention and reduction initiatives and programs that promote responsible borrowing, financial literacy, debt management, research, and informed policymaking ~~[in the state]~~ and shall work with the appropriate state agencies and other entities inside and outside this state, including eligible postsecondary educational institutions, eligible lenders, servicers, secondary markets, the Texas Higher Education Coordinating Board, the Texas ~~[Central]~~ Education Agency, ~~[and]~~ state professional and occupational licensing agencies, and the United States Department of Education.

(b) [(c)] The corporation shall maintain a system of communication among the appropriate state agencies and entities to address student ~~[reduce]~~ loan default prevention issues ~~[claims]~~.

SECTION 19. Section 57.49, Education Code, is amended to read as follows:

Sec. 57.49. COOPERATION OF STATE AGENCIES AND SUBDIVISIONS.

Each agency and political subdivision of the state shall cooperate with the corporation in providing information to the agency's or political subdivision's clients concerning student financial aid, including information about delinquency, default prevention, and life-of-loan issues. Each agency and political subdivision shall provide information to the corporation on request to assist the corporation in curing delinquent loans, ~~[and]~~ collecting defaulted loans, and developing information and reports concerning responsible borrowing.

SECTION 20. Sections 57.50 and 57.71, Education Code, are amended to read as follows:

Sec. 57.50. NONDISCRIMINATION. Neither the corporation nor an eligible lender may discriminate against an eligible student in making a loan or loan guarantee on the basis of race, age, religion, or sex or any other basis prohibited by applicable law.

Sec. 57.71. FEDERAL ~~[RESERVE]~~ AND OPERATING FUNDS. The corporation shall maintain a federal fund ~~[establish reserve]~~ and operating fund ~~[funds]~~ in accordance with Sections ~~[Section]~~ 422, 422A, and 422B of the Higher Education Act of 1965 (20 U.S.C. Sections ~~[Section]~~ 1072, 1072a, and 1072b), as amended.

SECTION 21. Subchapter D, Chapter 57, Education Code, is amended by adding Section 57.762 to read as follows:

Sec. 57.762. REVIEW BY STATE AUDITOR. In addition to any other audit required by law, the state auditor shall periodically review the corporation's activities in a manner consistent with the state auditor's audit plan under Chapter 321, Government Code. The corporation shall reimburse the state auditor for all reasonable costs incurred by the state auditor in conducting a review under this section.

SECTION 22. Section 57.78, Education Code, is amended to read as follows:

Sec. 57.78. INVESTMENTS. The federal fund maintained by the corporation under Section 57.71 shall ~~[All money of the corporation may]~~ be invested in accordance with Section 422A of the Higher Education Act of 1965 (20 U.S.C. Section 1072a), as amended. The operating fund maintained by the corporation under Section 57.71 may be invested only in accordance with Chapter 2256, Government Code. Authority to invest the operating fund in accordance with Chapter 2256, Government Code, complies with Section 422B of the Higher Education Act of 1965 (20 U.S.C. Section 1072b), as amended.

SECTION 23. The following provisions of the Education Code are repealed:

- (1) Section 57.13(d);
- (2) Sections 57.19(c), (g), and (h);
- (3) Sections 57.41(c) and (d);
- (4) Section 57.42;
- (5) Section 57.43;
- (6) Section 57.44;
- (7) Section 57.45;
- (8) Section 57.46; and
- (9) Sections 57.481(d), (e), (f), (g), and (h).

SECTION 24. (a) Notwithstanding any other law, to comply with the requirements of Section 57.13, Education Code, as amended by this Act, and Section 30a, Article XVI, Texas Constitution:

(1) the term of the member of the board of directors of the Texas Guaranteed Student Loan Corporation appointed under Section 57.13(b)(1), Education Code, for a term to expire January 31, 2017, expires September 1, 2011; and

(2) that board position ceases to exist on September 1, 2011.

(b) Subsection (a) of this section does not prohibit the member of the board of directors of the Texas Guaranteed Student Loan Corporation serving in the board position that ceases to exist under that subsection from being appointed as a member of the board under Section 57.13(b), Education Code, for any other term if the person is otherwise qualified to serve in that position.

SECTION 25. This Act takes effect September 1, 2011.

### **Floor Amendment No. 1**

Amend **CSSB 40** (house committee printing), in SECTION 14 of the bill, by striking added Section 57.24(f), Education Code (page 12, lines 9 through 13).

### **Floor Amendment No. 2**

Amend **CSSB 40** (house committee printing) as follows:

(1) Strike SECTION 4 of the bill, amending Sections 57.13(a) and (b), Education Code (page 3, line 26, through page 4, line 16), and substitute the following:

SECTION 4. Section 57.13(b), Education Code, is amended to read as follows:

(b) The governor, with the advice and consent of the senate, shall appoint the ~~[10]~~ members of ~~[to]~~ the board as follows:

(1) five members who must have knowledge of or experience in finance, including management of funds or business operations;

(2) one member who must be a student enrolled at a postsecondary educational institution for the number of credit hours required by the institution to be classified as a full-time student of the institution; and

(3) five ~~four~~ members who must be members the faculty or administration of a ~~an eligible~~ postsecondary educational institution that is an eligible institution for purposes of the Higher Education Act of 1965, as amended ~~[as defined by Section 57.46]~~.

(2) Strike SECTION 6 of the bill, amending Section 57.14, Education Code (page 5, lines 9 through 14), and substitute the following:

SECTION 6. Section 57.14, Education Code, is amended to read as follows:

Sec. 57.14. DIRECTORS' TERMS OF OFFICE. Members of the board ~~[appointed by the governor]~~ serve for terms of six years, with the terms of three or four members, as applicable, expiring on January 31 of each odd-numbered year.

(3) Strike SECTION 24 of the bill (page 17, line 21 through page 18, line 8), and substitute the following:

SECTION 24. Notwithstanding any other law, to comply with the requirements of Section 57.13, Education Code, as amended by this Act, and Section 30a, Article XVI, Texas Constitution, as soon as practicable on or after September 1, 2011, the governor shall appoint one additional member to the board of directors of the Texas Guaranteed Student Loan Corporation under Section 57.13(b)(3), Education Code, for a term to expire January 31, 2015.

The amendments were read.

Senator Zaffirini moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 40** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Duncan, Watson, Carona, and Eltife.

### SENATE BILL 472 WITH HOUSE AMENDMENTS

Senator West called **SB 472** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Floor Amendment No. 1 on Third Reading**

Amend **SB 472** (house committee printing) on third reading by adding the following appropriately numbered SECTION and renumbering SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 209, Property Code, is amended by adding Section 209.0041 to read as follows:

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS. (a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision; and

(2) a right to direct the size, shape, and composition of the subdivision.

(b) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(d) This section does not apply to the amendment of a declaration during a development period.

(e) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

(f) This section supersedes any contrary requirement in a dedicatory instrument.

(g) To the extent of any conflict with another provision of this title, this section prevails.

(h) Except as provided by this subsection, a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law. If the declaration contains a lower percentage, the percentage in the declaration controls.

(i) A bylaw may not be amended to conflict with the declaration.

**Floor Amendment No. 2 on Third Reading**

Amend **SB 472** on third reading, in added Section 209.0058, Property Code, by adding the following new subsection:

(d) A person whose name is on the ballot may not access the signed ballots.

**Floor Amendment No. 3 on Third Reading**

Amend **SB 472** (house committee printing) on third reading as follows:

(1) In SECTION 3 of the bill (page 4, line 21), between "SECTION 3." and "Section 209.0059", insert "Sections 202.004(d), (e), (f), and (g).".

(2) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 202.004, Property Code, is amended by adding Subsections (d), (e), (f), and (g) to read as follows:

(d) In evaluating an alleged or potential violation of a restrictive covenant, a property owners' association board shall make a reasonable accommodation with respect to a person with a disability that has been evidenced by a written report by a

physician. In the absence of clear and convincing evidence that the accommodation will create a substantial and imminent risk to public safety or require a substantial expenditure by the property owners' association for physical improvements, the board may not enforce a restrictive covenant in a manner that is inconsistent with the physician's report or that imposes an undue hardship on the person.

(e) A determination by the property owners' association board to not enforce a restrictive covenant under Subsection (d) may not be considered a waiver of the association's authority to enforce any dedicatory instrument provision in the future.

(f) A property owners' association board shall document the following information in the minutes of the board meeting and provide a copy of the minutes to a person subject to an enforcement of a restrictive covenant under circumstances described by Subsection (d):

(1) the specific facts and circumstances constituting a public safety risk or requiring a substantial expenditure under Subsection (d);

(2) the person subjected to the enforcement of the covenant; and

(3) the board members voting for and against the enforcement of the covenant.

(g) A determination made in violation of Subsection (d) or (f) is void and unenforceable.

The amendments were read.

Senator West moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 472** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Wentworth, Nichols, Nelson, and Davis.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2490**

Senator Carona called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2490** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2490** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Eltife, Lucio, Van de Putte, and Zaffirini.

**CONFERENCE COMMITTEE ON HOUSE BILL 2900**

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2900** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2900** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Harris, Chair; Huffman, Watson, Lucio, and Rodriguez.

**CONFERENCE COMMITTEE ON HOUSE BILL 1711**

Senator Jackson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1711** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1711** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Williams, Eltife, Huffman, and Lucio.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Thursday, May 26, 2011 - 3

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 3** (140 Yeas, 2 Nays, 1 Present, not voting)

**HB 1043** (129 Yeas, 12 Nays, 1 Present, not voting)

**HB 1228** (133 Yeas, 7 Nays, 3 Present, not voting)

**HB 1386** (111 Yeas, 32 Nays, 1 Present, not voting)

**HB 1728** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 1754** (71 Yeas, 68 Nays, 2 Present, not voting)

**HB 1788** (96 Yeas, 47 Nays, 1 Present, not voting)

**HB 2207** (142 Yeas, 0 Nays, 1 Present, not voting)

**HB 2594** (103 Yeas, 35 Nays, 1 Present, not voting)

**HB 3090** (138 Yeas, 1 Nays, 2 Present, not voting)

**HB 3396** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 3859** (141 Yeas, 0 Nays, 2 Present, not voting)

THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**HB 1400** (non-record vote)

House Conferees: Elkins - Chair/Anchia/Bonnen/King, Tracy O./Martinez Fischer

**HB 1517** (non-record vote)

House Conferees: Isaac - Chair/Kleinschmidt/Lozano/Phillips/Rodriguez, Eddie

**HB 1616** (non-record vote)

House Conferees: Geren - Chair/Hamilton/King, Phil/Kolkhorst/Ritter

**HB 2439** (non-record vote)

House Conferees: Gallego - Chair/Harless/Hilderbran/Martinez, "Mando"/Menendez

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 144** (non-record vote)

House Conferees: Thompson - Chair/Alonzo/Davis, Yvonne/Dutton/Gallego

**SB 156** (non-record vote)

House Conferees: Gonzales, Veronica - Chair/Coleman/Davis, John/Kolkhorst/Zerwas

**SB 341** (non-record vote)

House Conferees: Menendez - Chair/Farias/Larson/Martinez Fischer/Ritter

**SB 747** (non-record vote)

House Conferees: Hamilton - Chair/Driver/Kuempel/Quintanilla/Thompson

**SB 1198** (non-record vote)

House Conferees: Hartnett - Chair/Bohac/Madden/Munoz, Jr./Thompson



THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**SB 321** (130 Yeas, 11 Nays, 2 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### SENATE BILL 1134 WITH HOUSE AMENDMENTS

Senator Hegar called **SB 1134** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### Amendment

Amend **SB 1134** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the issuance of permits for certain facilities regulated by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.051961, 382.051962, and 382.051963 to read as follows:

Sec. 382.051961. PERMIT FOR CERTAIN OIL AND GAS FACILITIES. (a) This section applies only to new facilities or modifications of existing facilities that belong to Standard Industrial Classification Codes 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), and 4923 (Natural Gas Transmission and Distribution).

(b) The commission may not adopt a new permit by rule or a new standard permit or amend an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless the commission:

(1) conducts a regulatory analysis as provided by Section 2001.0225, Government Code;

(2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(3) establishes any required emissions limits or other emissions-related requirements based on:

(A) the evaluation of credible air quality monitoring data; and

(B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

(c) The air quality monitoring data and the evaluation of that data under Subsection (b):

(1) must be relevant and technically and scientifically credible, as determined by the commission; and

(2) may be generated by an ambient air quality monitoring program conducted by or on behalf of the commission in any part of the state or by another governmental entity of this state, a local or federal governmental entity, or a private organization.

Sec. 382.051962. AUTHORIZATION FOR PLANNED MAINTENANCE, START-UP, OR SHUTDOWN ACTIVITIES RELATING TO CERTAIN OIL AND GAS FACILITIES. (a) In this section, "planned maintenance, start-up, or shutdown activity" means an activity with emissions or opacity that:

(1) is not expressly authorized by commission permit, rule, or order and involves the maintenance, start-up, or shutdown of a facility;

(2) is part of normal or routine facility operations;

(3) is predictable as to timing; and

(4) involves the type of emissions normally authorized by permit.

(b) The commission may adopt one or more permits by rule or one or more standard permits and may amend one or more existing permits by rule or standard permits to authorize planned maintenance, start-up, or shutdown activities for facilities described by Section 382.051961(a). The adoption or amendment of a permit under this subsection must comply with Section 382.051961(b).

(c) An unauthorized emission or opacity event from a planned maintenance, start-up, or shutdown activity is subject to an affirmative defense as established by commission rules as those rules exist on the effective date of this section if:

(1) the emission or opacity event occurs at a facility described by Section 382.051961(a);

(2) an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to the commission on or before the earlier of:

(A) January 5, 2014; or

(B) the 120th day after the effective date of a new or amended permit adopted by the commission under Subsection (b); and

(3) the affirmative defense criteria in the rules are met.

(d) The affirmative defense described by Subsection (c) is not available for a facility on or after the date that an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is approved, denied, or voided.

Sec. 382.051963. AMENDMENT OF CERTAIN PERMITS. (a) A permit by rule or standard permit that has been adopted by the commission under this subchapter and is in effect on the effective date of this section may be amended to require:

(1) the permit holder to provide to the commission information about a facility authorized by the permit, including the location of the facility; and

(2) any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or used solely by the operator of the facility or by the owner of the property upon which the facility is located.

(b) The amendment of a permit under this section is not subject to Section 382.051961(b).

SECTION 2. (a) Sections 382.051961, 382.051962, and 382.051963, Health and Safety Code, as added by this Act, apply only to a new permit by rule or a new standard permit or any amendment to an existing permit by rule or amendment to an existing standard permit adopted by the Texas Commission on Environmental Quality on or after the effective date of this Act.

(b) A permit by rule or standard permit adopted by the Texas Commission on Environmental Quality and in effect before the effective date of this Act is not subject to Sections 382.051961 and 382.051962, Health and Safety Code, as added by this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

### **Floor Amendment No. 1**

Amend **CSSB 1134** (house committee report) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, lines 6 and 7), strike "and 382.051963" and substitute "382.051963, and 382.051964".

(2) In SECTION 1 of the bill, after added Section 382.051963, Health and Safety Code (page 4, between lines 25 and 26), add the following:

Sec. 382.051964. AGGREGATION OF FACILITIES. Notwithstanding any other provision of this chapter, the commission may not aggregate a facility that belongs to a Standard Industrial Classification Code identified by Section 382.051961(a) with another facility that belongs to a Standard Industrial Classification Code identified by that section for purposes of consideration as an oil and gas facility, a stationary source, or another single source in a permit by rule or a standard permit unless the facilities being aggregated:

(1) are under the control of the same person or are under the control of persons under common control;

(2) belong to the same two-digit major grouping of Standard Industrial Classification Codes;

(3) are operationally dependant; and

(4) are located not more than 500 feet from a tank battery, separator, or combustion facility.

(3) In SECTION 2(a) of the bill (page 4, lines 26 and 27), strike "and 382.051963" and substitute "382.051963, and 382.051964".

(4) In SECTION 2(b) of the bill (page 5, lines 7 and 8), strike "382.051961 and 382.051962" and substitute "382.051961, 382.051962, and 382.051964".

**Floor Amendment No. 3**

Amend **CSSB 1134** (house committee report) in SECTION 1 of the bill, in added Section 382.051961, Health and Safety Code (page 2, between lines 26 and 27), by inserting the following:

(d) Unless a demonstration is otherwise required under federal law, a new or amended standard permit or permit by rule adopted under this section may not require a demonstration of compliance with a national ambient air quality standard before the demonstration is required by a state implementation plan adopted to implement that national ambient air quality standard.

**Floor Amendment No. 1 on Third Reading**

Amend **CSSB 1134** on third reading in added Section 382.051964, Health and Safety Code, as added by Amendment No. 1 by Wayne Smith, as follows:

(1) In added Section 382.051964(2), Health and Safety Code, between "same" and "two-digit", insert "first".

(2) In added Section 382.051964(4), Health and Safety Code, strike "tank battery, separator, or combustion facility" and substitute "condensate tank, oil tank, produced water storage tank, or combustion facility that:

(A) is under the control of the same person who controls the facilities being aggregated or is under the control of persons under common control;

(B) belongs to the same first two-digit major grouping of Standard Industrial Classification Codes as the facilitates being aggregated; and

(C) is operationally dependant on the facilities being aggregated".

The amendments were read.

Senator Hegar moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1134** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Fraser, Deuell, Jackson, and Whitmire.

**BILLS AND RESOLUTIONS SIGNED**

The President Pro Tempore announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

**SB 1124, SB 1169, SB 1200, SB 1225, SB 1290, SB 1360, SB 1383, SB 1393, SB 1434, SB 1545, SB 1560, SB 1617, SB 1619, SB 1726, SB 1799, SB 1877, SB 1899, SB 1910, SB 1913, SB 1916, SB 1925, SB 1926, SCR 2, SCR 58, SJR 9, SJR 14, SJR 26, SJR 37, SJR 50.**

**CONFERENCE COMMITTEE ON HOUSE BILL 2729**

Senator Watson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2729** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2729** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Watson, Chair; Jackson, Eltife, Zaffirini, and Ellis.

**SENATE BILL 573 WITH HOUSE AMENDMENTS**

Senator Nichols called **SB 573** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 573** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED****AN ACT**

relating to certificates of public convenience and necessity for water or sewer services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.254, Water Code, is amended by amending Subsections (a) and (a-2) and adding Subsections (a-5) and (a-6) to read as follows:

(a) The commission at any time after notice and hearing may~~[], on its own motion or on receipt of a petition described by Subsection (a-1),]~~ revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(a-2) A landowner is not entitled to make the election described in Subsection (a-1) or (a-5) but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by the commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(a-5) As an alternative to decertification under Subsection (a) and expedited release under Subsection (a-1), the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000.

(a-6) The commission shall grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition. The commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program. The commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under Subsection (a-5) as otherwise provided by this section.

SECTION 2. This Act takes effect September 1, 2011.

### **Floor Amendment No. 1**

Amend **CSSB 573** (house committee report) in SECTION 2.45 of the bill, in added Section 13.254(a-5), Water Code (page 77, line 11), between "220,000" and the period by inserting "that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more".

### **Floor Amendment No. 2**

Amend **CSSB 573** (house committee report) as follows:

(1) Strike the recital to SECTION 1 of the bill (page 1, lines 5-7) and substitute "Section 13.254, Water Code, is amended by amending Subsections (a), (a-1), (a-2), and (a-3) and adding Subsections (a-5), (a-6), and (h) to read as follows:".

(2) In SECTION 1 of the bill, in amended Section 13.254, Water Code (page 2, between lines 11 and 12), insert the following:

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The fact that a

certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the commission, the [The] petitioner shall send [deliver], via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought;

(B) the timeframe within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and

(F) [(D)] any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide ~~[is capable of providing]~~ continuous and adequate service within the timeframe, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area.

(3) In SECTION 1 of the bill, in amended Section 13.254, Water Code (page 2, between lines 22 and 23), insert the following:

(a-3) Within 60 ~~[90]~~ calendar days from the date the commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the commission shall grant the petition unless the commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based

solely on the information provided by the petitioner and the certificate holder. The commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section. If the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area the petitioner seeks to have released, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(4) In SECTION 1 of the bill, in amended Section 13.254, Water Code (page 3, between lines 13 and 14), insert the following:

(h) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.

(5) Add the following appropriately numbered SECTIONS to the bill and renumber the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 13.245, Water Code, is amended by amending Subsection (b) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(b) Except as provided by Subsections [Subsection] (c), (c-1), and (c-2), the commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c-1) If a municipality has not consented under Subsection (b) before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements plan required by Section 13.244(d)(3) or a subdivision plat, the commission may grant the certificate of public convenience and necessity without the consent of the municipality if:

(1) the commission makes the findings required by Subsection (c);

(2) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and

(3) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(A) comply with the municipality's service extension and development process; or

(B) enter into a contract for water or sewer services with the municipality.



(c-2) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the certificate of public convenience and necessity to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(c-3) The commission must include as a condition of a certificate of public convenience and necessity granted under Subsection (c-1) or (c-2) that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

SECTION \_\_\_\_\_. Sections 13.2451(a) and (b), Water Code, are amended to read as follows:

(a) Except as provided by Subsection (b), if [H] a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(b) The commission may not extend a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with Section 13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission. [A municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction must ensure that the municipality complies with Section 13.241 in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.]

SECTION \_\_\_\_\_. Section 13.246(h), Water Code, is amended to read as follows:

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

SECTION \_\_\_\_\_. The changes made by this Act to Sections 13.245, 13.2451, 13.246, and 13.254, Water Code, apply only to:

(1) a retail public utility's application for a certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of a municipality that is made on or after the effective date of this Act;

(2) an extension of a municipality's certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of the municipality on or after the effective date of this Act; and

(3) a petition to release an area from a certificate of public convenience and necessity that is made on or after the effective date of this Act.

### **Floor Amendment No. 3**

Amend Amendment No. 2 by Callegari to **CSSB 573** (house committee report) as follows:

(1) On page 3, line 15 of the amendment, strike "If" and substitute "Except in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to that county, if".

(2) On page 4, lines 2-3 of the amendment, strike "and (c-3)" and substitute "(c-3), and (c-4)".

(3) On page 5, between lines 16 and 17 of the amendment, insert the following:

(c-4) Subsections (c-1), (c-2), and (c-3) do not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county.

(4) On page 5, line 30 of the amendment, through page 6, line 1 of the amendment, strike "This subsection does not apply to a transfer of a certificate as approved by the utility commission." and substitute "This subsection does not apply to:

(1) a transfer of a certificate as approved by the commission; or

(2) an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county."

### **Floor Amendment No. 4**

Amend **CSSB 573** (house committee printing) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, lines 6-7), strike "Subsections (a-5) and (a-6)" and substitute "Subsections (a-5), (a-6), and (a-7)"

(2) In SECTION 1 of the bill in amended Section 13.254, Water Code (page 3, between lines 13-14), add the following:

(a-7) The utility shall include with the statement of intent provided to each landowner or ratepayer a notice of:

(1) a proceeding under this section related to certification or decertification;

(2) the reason or reasons for the proposed rate change; and

(3) any bill payment assistance program available to low-income ratepayers.

### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 573** (house committee printing) on third reading in SECTION 1 of the bill, in added Section 13.254(a-5), Water Code (page 3, line 4), between "220,000" and the period, by inserting ", and not in a county that has population of more than 45,500 and less than 47,500".

**Floor Amendment No. 2 on Third Reading**

Amend **CSSB 573** on third reading as follows:

(1) In Section 13.254(a-3), Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, strike "Except in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to that county, if the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area the petitioner seeks to have released, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.".

(2) Add a new appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 13.254, Water Code, is amended by adding Subsections (a-8), (a-9), and (a-10) to read as follows:

(a-8) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under Subsection (a-1), the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(a-9) Subsection (a-8) does not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to a county that borders the United Mexican States and the Gulf of Mexico.

(a-10) Subsection (a-8) does not apply to a county:

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) a county with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

(3) Strike Section 13.245(c-4), Water Code, as added on second reading in Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, and substitute the following:

(c-4) Subsections (c-1), (c-2), and (c-3) do not apply to:

(1) a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county;

(2) a county with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(3) a county with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (2).

(4) In the recital to the SECTION of the bill that amends Section 13.2451, Water Code, as added on second reading by Amendment No. 2 by Callegari, strike "Sections 13.2451(a) and (b), Water Code are amended" and substitute "Section 13.2451, Water Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2) to read as follows:".

(5) In Section 13.2451(b), Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, strike "This subsection does not apply to:

(1) a transfer of a certificate as approved by the commission; or

(2) an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county." and substitute "This subsection does not apply to a transfer of a certificate as approved by the commission.".

(6) In Section 13.2451, Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, insert the following:

(b-1) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county.

(b-2) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

### **Floor Amendment No. 3 on Third Reading**

Amend **CSSB 573** on third reading as follows:

(1) In Section 13.254(a-3), Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, strike "Except in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to that county, if the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area the petitioner seeks to have released, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.".

(2) Add a new appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 13.254, Water Code, is amended by adding Subsections (a-8), (a-9), and (a-11) to read as follows:

(a-8) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under Subsection (a-1), the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(a-9) Subsection (a-8) does not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to a county that borders the United Mexican States and the Gulf of Mexico.

(a-11) Subsection (a-8) does not apply to a county:

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border;  
or

(2) a county with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(3) In Section 13.245, Water Code, as amended on second reading in Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, insert the following:

(c-5) Subsections (c-1), (c-2), and (c-3) do not apply to:

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border;  
or

(2) a county with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(4) In the recital to the SECTION of the bill that amends Section 13.2451, Water Code, as added on second reading by Amendment No. 2 by Callegari, strike "Sections 13.2451(a) and (b), Water Code are amended" and substitute "Section 13.2451, Water Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-3) to read as follows:".

(5) In Section 13.2451(b), Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, strike "This subsection does not apply to:

(1) a transfer of a certificate as approved by the commission; or

(2) an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county." and substitute "This subsection does not apply to a transfer of a certificate as approved by the commission."

(6) In Section 13.2451, Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, insert the following:

(b-1) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county.

(b-3) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border;  
or

(2) a county with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

The amendments were read.

Senator Nichols moved to concur in the House amendments to **SB 573**.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Birdwell, Carona, Davis, Ellis, Eltife, Fraser, Gallegos, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Duncan, Estes, Hinojosa, Lucio, Uresti.

### **BILLS SIGNED**

The President Pro Tempore announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**SB 17, SB 173, SB 201, SB 244, SB 271, SB 327, SB 329, SB 364, SB 365, SB 370, SB 460, SB 475, SB 479, SB 717, SB 738, SB 762, SB 766, SB 768, SB 781, SB 789, SB 801, SB 819, SB 847, SB 937, SB 969, SB 975, SB 1009, SB 1026, SB 1042, SB 1055, SB 1058, SB 1073, SB 1120, HB 149, HB 254, HB 338, HB 343, HB 364, HB 412, HB 447, HB 528, HB 534, HB 577, HB 588, HB 654, HB 692, HB 737, HB 787, HB 890, HB 943, HB 963, HB 990, HB 1048, HB 1060, HB 1070, HB 1116, HB 1129, HB 1144, HB 1148, HB 1163, HB 1226, HB 1235, HB 1274, HB 1305, HB 1315, HB 1486, HB 1499, HB 1610, HB 1615, HB 1942, HB 1964, HB 1992, HB 2038, HB 2098, HB 2120, HB 2160, HB 2170, HB 2195, HB 2223, HB 2280, HB 2292, HB 2325, HB 2359, HB 2425, HB 2472, HB 2604, HB 2619, HB 2632.**

**(President in Chair)**

### **SENATE BILL 875 WITH HOUSE AMENDMENTS**

Senator Fraser called **SB 875** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 2**

Amend **SB 875** (house committee printing) as follows:

(1) In SECTION 2 of the bill (page 2, line 3), between "SECTION 2." and "Section 7.257," insert the following:

(a) Section 93.003, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b)

(2) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 93, Civil Practice and Remedies Code, is amended by adding Section 93.003 to read as follows:

Sec. 93.003. AFFIRMATIVE DEFENSE TO NUISANCE OR TRESPASS. (a) In a nuisance or trespass action brought against a person, as defined by Section 382.003, Health and Safety Code, there is a rebuttable presumption that the person is not liable for any injury allegedly caused by the actions of the person if the person establishes that:

(1) the alleged conduct on which the nuisance or trespass claim is based was authorized by the federal or state government, or an agency of the federal or state government, through the issuance of a rule, order, or permit, as defined by Section 7.001, Water Code; and

(2) the person was in substantial compliance with that rule, order, or permit while the alleged nuisance or trespass was occurring.

(b) The claimant may rebut the presumption established under Subsection (a) by a showing of clear and convincing evidence that:

(1) the person knowingly withheld or misrepresented material information relevant to determining compliance with the rule or order or to obtaining the permit from the federal or state government or agency of the federal or state government; and

(2) such withholding or misrepresentation of information was the primary reason the person allegedly complied with the rule or order or was successful in obtaining the permit.

### **Floor Amendment No. 1 on Third Reading**

Amend **SB 875** on third reading in Section 93.003, Civil Practice and Remedies Code, as added by the second reading Bonnen amendment by adding Subsection (c) to that section to read as follows:

(c) Nothing in this section prohibits or affects an action for nuisance or trespass related to the production, use, release into the environment, or remediation of methyl tertiary butyl ether.

### **Floor Amendment No. 2 on Third Reading**

Amend **SB 875** on third reading in Section 93.003(b), Civil Practice and Remedies Code, as added by Amendment No. 2 by Bonnen, by striking "clear and convincing evidence" and substituting "a preponderance of the evidence".

### **Floor Amendment No. 3 on Third Reading**

Amend the Bonnen Amendment (second reading) No. 2 to **SB 875** on third reading as follows:

On page 1, line 22, insert "specifically" between "was" and "authorized."

### **Floor Amendment No. 4 on Third Reading**

Amend **SB 875** on third reading as follows:

SECTION 1 (b) by striking the word "related to" and add in place "solely based on"

### **Floor Amendment No. 6 on Third Reading**

Amend **SB 875** on third reading, in added Section 93.003, Civil Practice and Remedies Code, by adding the following new subsection:

(c) An affirmative defense under this section may not be asserted against this state, a political subdivision of this state, or any other governmental entity in this state.

The amendments were read.

Senator Fraser moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 875** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Duncan, Watson, Jackson, and Estes.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2380**

Senator Shapiro called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2380** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 2380** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Patrick, Carona, Seliger, and Nelson.

### **SENATE BILL 181 WITH HOUSE AMENDMENTS**

Senator Shapiro called **SB 181** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 181** by inserting the following appropriately-numbered SECTION and renumbering any subsequent SECTIONS and updating any cross-references accordingly:

SECTION \_\_\_\_\_. Section 16.053(c), Water Code, is amended to read as follows:

(c) No later than 60 days after the designation of the regions under Subsection (b), the board shall designate representatives within each regional water planning area to serve as the initial coordinating body for planning. The initial coordinating body may then designate additional representatives to serve on the regional water planning group. The initial coordinating body shall designate additional representatives if necessary to ensure adequate representation from the interests comprising that region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. The regional water planning group shall maintain adequate representation from those interests. In addition, the commissioners court of each county located in the regional water planning area shall appoint one representative of the county to the regional water planning group. In addition, representatives of the board, the Parks and Wildlife Department, and the Department of Agriculture shall serve as ex officio members of each regional water planning group.



SECTION \_\_\_\_\_. As soon as practicable after the effective date of this Act, the commissioners court of each county in this state shall appoint an initial representative of the county to the regional water planning group for the regional water planning area in which the county is located, as required by Section 16.053(c), Water Code, as amended by this Act.

### **Floor Amendment No. 1 on Third Reading**

Amend **SB 181** on third reading by striking the SECTION of the bill amending Water Code Section 16.053(c), as added on second reading by House Floor Amendment No. 1, and renumbering the remaining sections appropriately.

The amendments were read.

Senator Shapiro moved to concur in the House amendments to **SB 181**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **BILLS AND RESOLUTIONS SIGNED**

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

**HB 2725, HB 2769, HB 2792, HB 2872, HB 2994, HB 3093, HB 3134, HB 3145, HB 3167, HB 3182, HB 3270, HB 3311, HB 3336, HB 3404, HB 3410, HB 3423, HB 3439, HB 3578, HB 3727, HB 3788, HB 3796, HB 3823, HB 3829, HB 3836, HB 3862, HB 3864, HCR 24, HCR 86, HCR 130, HCR 153, HJR 109.**

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

OGDEN  
DUNCAN  
HINOJOSA  
NELSON  
WILLIAMS

On the part of the Senate

PITTS  
CROWNOVER  
OTTO  
ZERWAS

On the part of the House

The Conference Committee Report on **HB 1** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2694**

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas  
May 24, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2694** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HUFFMAN  
FRASER  
HEGAR  
HINOJOSA  
NICHOLS

On the part of the Senate

W. SMITH  
BONNEN  
CHISUM  
GEREN

On the part of the House

The Conference Committee Report on **HB 2694** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 263**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 263** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CARONA  
ELTIFE  
RODRIGUEZ  
SELIGER  
ZAFFIRINI

On the part of the Senate

KOLKHORST  
COLEMAN  
S. DAVIS  
S. KING

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the revocation, suspension, or restriction of the license of a physician placed on deferred adjudication community supervision or arrested for certain offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 164.057, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The board shall revoke the license of a physician placed on deferred adjudication community supervision for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child); or

(3) Section 21.11, Penal Code (indecent with a child).

SECTION 2. Subchapter B, Chapter 164, Occupations Code, is amended by adding Section 164.0595 to read as follows:

Sec. 164.0595. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE FOR CERTAIN ARRESTS. (a) A disciplinary panel appointed under Section 164.059 may suspend or restrict the license of a person arrested for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);

(3) Section 21.02, Penal Code (continuous sexual abuse of a young child or children); or

(4) Section 21.11, Penal Code (indecent with a child).

(b) Before suspending or restricting a license under this section, the disciplinary panel must determine that the person arrested for an offense listed in Subsection (a) is the same person who holds a license issued by the board.

(c) A suspension or restriction under this section remains in effect until the final disposition of the case.

(d) Sections 164.059(c), (d), (e), (f), and (g) apply to a suspension or restriction under this section.

(e) The board shall adopt rules to implement this section, including rules regarding evidence that serves as proof of final disposition of a case.

SECTION 3. Subsection (b), Section 164.102, Occupations Code, is amended to read as follows:

(b) Except on an express determination, based on substantial evidence, that granting probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code; ~~or~~

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(4) any of the following sections of the Penal Code:

(A) Section 22.011(a)(2) (sexual assault of a child);

(B) Section 22.021(a)(1)(B) (aggravated sexual assault of a child);

(C) Section 21.02 (continuous sexual abuse of a young child or children); or

(D) Section 21.11 (indecenty with a child).

SECTION 4. (a) Subsection (c), Section 164.057, and Section 164.0595, Occupations Code, as added by this Act, and Section 164.102, Occupations Code, as amended by this Act, apply only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 263** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1112**

Senator Nichols submitted the following Conference Committee Report:

Austin, Texas

May 24, 2011

Honorable David Dewhurst

President of the Senate

Honorable Joe Straus

Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1112** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NICHOLS

SHAPIRO

WATSON

WILLIAMS

RODRIGUEZ

On the part of the Senate

PHILLIPS

HARPER-BROWN

LAVENDER

PICKETT

FLETCHER

On the part of the House

The Conference Committee Report on **HB 1112** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2499**

Senator Nichols submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2499** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NICHOLS  
HEGAR  
HINOJOSA  
HUFFMAN  
WHITMIRE

On the part of the Senate

COOK  
BONNEN  
BRANCH  
GEREN  
MENENDEZ

On the part of the House

The Conference Committee Report on **HB 2499** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 249**

Senator Estes submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 249** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ESTES  
CARONA  
FRASER  
LUCIO  
WILLIAMS

On the part of the Senate

ORR  
FLYNN  
LEGLER  
TRUITT

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the composition of the Finance Commission of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a) and (b), Section 11.101, Finance Code, are amended to read as follows:

(a) The Finance Commission of Texas is composed of 11 [~~nine~~] members appointed by the governor with the advice and consent of the senate.

(b) Members of the finance commission serve staggered six-year terms, with as near as possible to [~~of six years with the terms of~~] one-third of the members' terms [~~members~~] expiring February 1 of each even-numbered year.

SECTION 2. Subsections (b) and (c), Section 11.102, Finance Code, are amended to read as follows:

(b) Two members [~~One member~~] of the finance commission must be [~~a~~] banking executives [~~executive~~], one member of the finance commission must be a savings executive, one member of the finance commission must be a consumer credit executive, and one member of the finance commission must be a mortgage broker.

(c) Six [~~Five~~] members of the finance commission must be representatives of the general public. At least one of those members must be a certified public accountant.

SECTION 3. As soon as practicable after the effective date of this Act, the governor shall appoint two additional members to the Finance Commission of Texas. In appointing those members, the governor shall appoint one person to a term expiring February 1, 2014, and one person to a term expiring February 1, 2016.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 249** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3577**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3577** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI  
CARONA  
DUNCAN  
ELTIFE  
WATSON

On the part of the Senate

L. GONZALES  
SCHWERTNER  
STRAMA  
WORKMAN  
SCOTT

On the part of the House

The Conference Committee Report on **HB 3577** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 313**

Senator Seliger submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 313** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SELIGER  
DUNCAN  
ELTIFE  
HINOJOSA  
WATSON

On the part of the Senate

PRICE  
BECK  
LUCIO  
D. MILLER  
RITTER

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to priority groundwater management areas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 35.007, Water Code, is amended to read as follows:

(a) The executive director and the executive administrator shall meet periodically to identify, based on information gathered by the commission and the Texas Water Development Board, those areas of the state that are experiencing or that are expected to experience, within the immediately following 50-year [~~25-year~~] period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. Not later than September 1, 2005, the commission, with assistance and cooperation from the Texas Water Development Board, shall complete the initial designation of priority groundwater management

areas across all major and minor aquifers of the state for all areas that meet the criteria for that designation. The studies may be prioritized considering information from the regional planning process, information from the Texas Water Development Board groundwater management areas and from groundwater conservation districts, and any other information available. After the initial designation of priority groundwater management areas, the commission and the Texas Water Development Board shall annually review the need for additional designations as provided by this subsection.

SECTION 2. Section 35.008, Water Code, is amended by adding Subsection (j) to read as follows:

(j) The commission may adopt rules regarding:

(1) the creation of a district over all or part of a priority groundwater management area that was designated as a critical area under Chapter 35, Water Code, as that chapter existed before September 1, 1997, or under other prior law; and

(2) the addition of all or part of the land in a priority groundwater management area described by Subdivision (1) to an existing district.

SECTION 3. Section 35.012, Water Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Section 35.013, within ~~[Within]~~ two years, but no sooner than 120 days, from the date on which the commission issues an order under Section 35.008 designating a priority groundwater management area, for those areas that are not within a district, the commission shall ~~]:~~

~~[(1)]~~ create one or more new districts under Section 36.0151 ~~];~~

~~[(2)] recommend that the areas, or a portion of the areas, be added to an existing district under Section 35.013; or~~

~~[(3)] take any combination of the actions under Subdivisions (1) and (2)].~~

(b-1) For purposes of this section, the commission may consider territory in two separately designated priority groundwater management areas to be in the same designated priority groundwater management area if:

(1) the two areas share a common boundary and one or more common aquifers; and

(2) the commission determines that a district composed of territory in the two areas will result in more effective or efficient groundwater management than other options available to the commission.

SECTION 4. Section 35.013, Water Code, is amended by amending Subsections (b), (c), (e), (f), (g), and (h) and adding Subsections (b-1) and (g-1) to read as follows:

(b) The commission shall submit a copy of the order to the board of the district to which it is recommending the priority groundwater management area be added. Not later than the 120th day after the date of receiving the copy, the ~~[The]~~ board shall vote on the addition of the priority groundwater management area to the district and shall advise the commission of the outcome.

(b-1) If the district described by Subsection (b) has not approved an ad valorem tax on the date of the commission's order issued under Section 35.008 and the board of the district votes to accept the addition of the priority groundwater management area to the district, the board shall enter an order adding the territory in the district.



(c) If the district described by Subsection (b) has approved an ad valorem tax on the date of the commission's order issued under Section 35.008 and the board votes to accept the addition of the priority groundwater management area to the district, the board:

(1) shall enter an order adding the territory in the district;

(2) may request the Texas AgriLife ~~[Agricultural]~~ Extension Service, the commission, and the Texas Water Development Board, with the cooperation and assistance of the Department of Agriculture and other state agencies, to administer an educational program to inform the residents of the status of the area's water resources, the addition of territory to the district, and ~~[management]~~ options for financing management of the groundwater resources of the ~~[including possible annexation into a]~~ district;

(3) ~~[(2)]~~ shall call an election to be held not later than the 270th day after the date of the board's vote under Subsection (b) within the priority groundwater management area, or portion of the priority groundwater management area, as delineated by the commission to determine if the added area will assume a proportional share of the debts or taxes of the district ~~[priority groundwater management area will be added to the district]; and~~

(4) ~~[(3)]~~ shall designate election precincts and polling places for the elections in the order calling an election under this subsection.

(e) The ballots for the election shall be printed to provide for voting for or against the proposition: "The ~~[inclusion of \_\_\_\_\_ (briefly describe priority groundwater management area) in the \_\_\_\_\_ District. "If the district has outstanding debts or taxes, the proposition shall include the following language: "and]~~ assumption by the \_\_\_\_\_ (briefly describe the territory added under Subsection (c)(1)) ~~[described area]~~ of a proportional share of the debts or taxes of the \_\_\_\_\_ District instead of the assessment of fees in the described area to fund the groundwater management activities of the district."

(f) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the board, and the board shall canvass the returns for the election within the priority groundwater management area and declare the results. If a majority of the voters in the priority groundwater management area voting on the proposition vote in favor of the proposition, the board shall declare that the priority groundwater management area assumes a proportional share of the debts or taxes of [is added to] the district. If a majority of the voters in the priority groundwater management area voting on the proposition do not vote in favor of the proposition [against adding the priority groundwater management area to the district], the board shall adopt rules to implement Subsection (g-1) [declare that the priority groundwater management area is not added to the district]. The board shall file a copy of the election results with the commission.

(g) The ~~[If the voters approve adding the priority groundwater management area to the district, the]~~ board of the district to which the priority groundwater management area is added shall provide reasonable representation on that board compatible with the district's existing scheme of representation. Not later than the 30th day after the date on which the board declares that the priority groundwater management area is

added to the district, the board of the existing district shall appoint a person or persons to represent the area until the next regularly scheduled election or appointment of directors.

(g-1) If the voters do not approve the assumption of a proportional share of the debts or taxes of a district under Subsection (e), the board shall assess production fees in the added territory based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may use revenue generated for any purpose authorized by Section 36.206 or 36.207. Initial production fees may not exceed production fees as set in Section 36.205(c), but may be increased by the board on a majority vote after the first anniversary of the commission order. Production fees may be raised incrementally by 40 percent and 10 percent every following year until the maximum production fees equal:

(1) \$2 per acre-foot, payable annually, for water used for an agricultural purpose; or

(2) 30 cents per 1,000 gallons, payable annually, for water used for any non-agricultural purpose.

(h) Not later than the first anniversary of the date on which ~~[H]~~ the proposition is defeated, or ~~[H]~~ the board of the existing district votes not to accept the addition of the area to the district, ~~[then]~~ the commission shall, except as provided under Subsection (i):

(1) ~~[S]~~ create under Section 36.0151 one or more districts covering the priority groundwater management area; or

(2) recommend the area be added to another existing district as provided by this section ~~[not later than the first anniversary of the date on which the proposition is defeated or the board votes not to accept the area].~~

SECTION 5. Section 36.0151, Water Code, is amended by amending Subsection (a) and adding Subsections (c), (d), and (e) to read as follows:

(a) If the commission is required to create a district under Section 35.012(b), it shall, without an evidentiary hearing, issue an order creating the district and shall provide in its order that temporary directors be appointed under Section 36.0161 ~~[36.016]~~ and that an election be called by the temporary directors to authorize the district to assess taxes and to elect permanent directors.

(c) The commission may amend the territory in an order issued under Section 35.008 or this section to adjust for areas that, in the time between when the order was issued under Section 35.008 and the order is issued under this section, have:

(1) been added to an existing district or created as a separate district; or

(2) not been added to an existing district or created as a separate district.

(d) In making a modification under Subsection (c), the commission may recommend:

(1) creation of a new district in the area; or

(2) that the area be added to a different district.

(e) Except as provided by Section 35.013(h), a change in the order under Subsection (c) does not affect a deadline under Section 35.012 or 35.013.

SECTION 6. Subsection (h), Section 36.0171, Water Code, is amended to read as follows:

(h) If the majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set production [~~permit~~] fees in accordance with Section 35.013(g-1) to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 7. (a) The changes in law made by this Act apply to any territory in a priority groundwater management area that is not included in a groundwater conservation district on the effective date of this Act.

(b) Not later than September 1, 2012, the Texas Commission on Environmental Quality shall create a district or add territory to an existing district for any territory for which the commission has issued an order recommending creation of a district or addition of territory to an existing district under Section 35.008, Water Code, before the effective date of this Act, unless the commission determines that the territory is not suitable under Subsection (i), Section 35.013, Water Code.

SECTION 8. All governmental acts and proceedings, including the adoption of rules, of the Texas Commission on Environmental Quality relating to the creation of a groundwater conservation district over all or part of a priority groundwater management area that was designated as a critical area under Chapter 35, Water Code, as that chapter existed before September 1, 1997, or under other prior law, are validated in all respects as of the dates on which they occurred.

SECTION 9. Subsection (a), Section 35.007, Water Code, as amended by this Act, applies only to a designation of a priority groundwater management area made by the Texas Commission on Environmental Quality on or after the effective date of this Act. A designation made before the effective date of this Act is governed by the law in effect when the designation was made, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 313** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 871**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 871** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI

CARONA

DEUELL

ELTIFE

RODRIGUEZ

On the part of the Senate

Y. DAVIS

COLEMAN

GOODEN

NAISHTAT

REYNOLDS

On the part of the House

The Conference Committee Report on **HB 871** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 1489

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas

May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1489** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WHITMIRE

HARRIS

HINOJOSA

HUFFMAN

SHAPIRO

On the part of the Senate

MADDEN

ALLEN

HUNTER

PERRY

WORKMAN

On the part of the House

### A BILL TO BE ENTITLED AN ACT

relating to educational, juvenile justice, and criminal justice responses to truancy.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 25.094, Education Code, is amended to read as follows:

(a) An individual commits an offense if the individual:

(1) is 12 years of age or older and younger than 18 years of age;

(2) is required to attend school under Section 25.085; and  
(3) ~~(2)~~ fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

SECTION 2. Section 51.03, Family Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding any other law, for purposes of conduct described by Subsection (b)(2), "child" means a person who is:

- (1) 10 years of age or older;
- (2) alleged or found to have engaged in the conduct as a result of acts committed before becoming 18 years of age; and
- (3) required to attend school under Section 25.085, Education Code.

SECTION 3. Subsections (a) and (b), Section 54.021, Family Code, are amended to read as follows:

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the constitutional county court, if the county has a population of two million or more, or to an appropriate justice or municipal court, with the permission of the county, justice, or municipal court, for disposition in the manner provided by Subsection (b) if the child is 12 years of age or older and is alleged to have engaged in conduct described in Section 51.03(b)(2). A waiver of jurisdiction under this subsection may be for an individual case or for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2). The waiver of a juvenile court's exclusive original jurisdiction for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2) is effective for a period of one year.

(b) A county, justice, or municipal court may exercise jurisdiction over a person alleged to have engaged in conduct indicating a need for supervision by engaging in conduct described in Section 51.03(b)(2) in a case where:

- (1) the person is 12 years of age or older;
  - (2) the juvenile court has waived its original jurisdiction under this section;
- and

(3) ~~(2)~~ a complaint is filed by the appropriate authority in the county, justice, or municipal court charging an offense under Section 25.094, Education Code.

SECTION 4. Chapter 54, Family Code, is amended by adding Section 54.0402 to read as follows:

Sec. 54.0402. DISPOSITIONAL ORDER FOR FAILURE TO ATTEND SCHOOL. A dispositional order regarding conduct under Section 51.03(b)(2) is effective for the period specified by the court in the order but may not extend beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

SECTION 5. Section 54.05, Family Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), any ~~Any~~ disposition, except a commitment to the Texas Youth Commission, may be modified by the juvenile court as provided in this section until:

- (1) the child reaches his 18th birthday; or

(2) the child is earlier discharged by the court or operation of law.

(a-1) A disposition regarding conduct under Section 51.03(b)(2) may be modified by the juvenile court as provided by this section until the expiration of the period described by Section 54.0402.

(b) Except for a commitment to the Texas Youth Commission or a disposition under Section 54.0402, all dispositions automatically terminate when the child reaches his 18th birthday.

SECTION 6. Article 45.054, Code of Criminal Procedure, is amended by adding Subsections (i) and (j) to read as follows:

(i) A county, justice, or municipal court shall dismiss the complaint against an individual alleging that the individual committed an offense under Section 25.094, Education Code, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under this article; or

(2) the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

(j) A county, justice, or municipal court may waive or reduce a fee or court cost imposed under this article if the court finds that payment of the fee or court cost would cause financial hardship.

SECTION 7. Article 45.055, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by Subsection (e), an ~~An~~ individual convicted of not more than one violation of Section 25.094, Education Code, may, on or after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged.

(e) A court shall expunge an individual's conviction under Section 25.094, Education Code, and records relating to a conviction, regardless of whether the individual has previously been convicted of an offense under that section, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under Article 45.054; or

(2) before the individual's 21st birthday, the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

SECTION 8. Subsections (b) and (c), Article 102.0174, Code of Criminal Procedure, are amended to read as follows:

(b) The governing body of a municipality by ordinance may create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense in a municipal court to pay a juvenile case manager fee not to exceed \$5 as a cost of court if the municipality employs a juvenile case manager. A municipality that does not employ a juvenile case manager may not collect a fee under this subsection.

(c) The commissioners court of a county by order may create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense in a justice court, county court, or county court at law to pay a juvenile case manager fee not to exceed \$5 as a cost of court if the court employs a juvenile case manager. A justice court, county court, or county court at law that does not employ a juvenile case manager may not collect a fee under this subsection.

SECTION 9. Subsections (a) and (b), Section 25.091, Education Code, are amended to read as follows:

(a) A peace officer serving as an attendance officer has the following powers and duties concerning enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of compulsory school attendance requirements referred to the peace officer;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 to the student; and

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the [a] student to a juvenile court or filing a complaint against the [a] student in a county, justice, or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; or [and]

(ii) ~~(B)~~ filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093;

(3) to serve court-ordered legal process;

(4) to review school attendance records for compliance by each student investigated by the officer;

(5) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(6) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer may not enter a residence without the permission of the parent of a student required under this subchapter to attend school or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent; and

(7) to take a student into custody with the permission of the student's parent or in obedience to a court-ordered legal process.

(b) An attendance officer employed by a school district who is not commissioned as a peace officer has the following powers and duties with respect to enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of the compulsory school attendance requirements referred to the attendance officer;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 to the student; and

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the [a] student to a juvenile court or filing a complaint against the [a] student in a county, justice, or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; and

(ii) ~~[(B)]~~ filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093;

(3) to monitor school attendance compliance by each student investigated by the officer;

(4) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(5) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that the attendance officer may not enter a residence without permission of the parent or of the owner or tenant of the residence;

(6) at the request of a parent, to escort a student from any location to a school campus to ensure the student's compliance with compulsory school attendance requirements; and

(7) if the attendance officer has or is informed of a court-ordered legal process directing that a student be taken into custody and the school district employing the officer does not employ its own police department, to contact the sheriff, constable, or any peace officer to request that the student be taken into custody and processed according to the legal process.

SECTION 10. Subchapter C, Chapter 25, Education Code, is amended by adding Section 25.0915 to read as follows:

Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT. (a) A school district shall adopt truancy prevention measures designed to:

(1) address student conduct related to truancy in the school setting;

(2) minimize the need for referrals to juvenile court for conduct described by Section 51.03(b)(2), Family Code; and

(3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094.

(b) Each referral to juvenile court for conduct described by Section 51.03(b)(2), Family Code, or complaint filed in county, justice, or municipal court alleging a violation by a student of Section 25.094 must:

(1) be accompanied by a statement from the student's school certifying that:

(A) the school applied the truancy prevention measures adopted under Subsection (a) to the student; and

(B) the truancy prevention measures failed to meaningfully address the student's school attendance; and

(2) specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29.

SECTION 11. Section 58.106, Family Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:



- (1) with the permission of the juvenile offender, to military personnel of this state or the United States;
- (2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;
- (3) to a juvenile justice agency;
- (4) to the Texas Youth Commission and the Texas Juvenile Probation Commission for analytical purposes; ~~and~~
- (5) to the office of independent ombudsman of the Texas Youth Commission; and
- (6) to a county, justice, or municipal court exercising jurisdiction over a juvenile under Section 54.021.

(a-1) Information disseminated under Subsection (a) remains confidential after dissemination and may be disclosed by the recipient only as provided by this title.

SECTION 12. Section 102.061, Government Code, as amended by Chapters 87 (S.B. 1969), 1172 (H.B. 3389), and 1183 (H.B. 3637), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a county and district court technology fee (Art. 102.0169, Code of Criminal Procedure) . . . \$4;
- (5) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (6) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50; ~~and~~
- (7) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager; and
- (8) ~~(7)~~ a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 13. Section 102.081, Government Code, as amended by Chapters 87 (S.B. 1969), 1172 (H.B. 3389), and 1183 (H.B. 3637), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a county and district court technology fee (Art. 102.0169, Code of Criminal Procedure) . . . \$4;

(5) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(6) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50; ~~and~~

(7) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager; and

(8) ~~(7)~~ a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 14. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager;

(7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30;

(8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and

(9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 15. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4;

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the municipality employs a juvenile case manager;  
and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 16. Subsection (e), Article 45.056, Code of Criminal Procedure, is repealed.

SECTION 17. The change in law made by this Act applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, conduct occurs before the effective date of this Act if any element of the violation occurs before that date.

SECTION 18. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 19. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1489** was filed with the Secretary of the Senate.

### **MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 6:25 p.m. agreed to adjourn, pending the receipt of Messages from the House, until 10:00 a.m. tomorrow.

### **MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Thursday, May 26, 2011 - 4

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**HB 213** (non-record vote)

House Conferees: Rodriguez, Eddie - Chair/Anchia/Keffer/Munoz, Jr./Truitt

**HB 300** (non-record vote)

House Conferees: Kolkhorst - Chair/Flynn/Laubenberg/Naishtat/Truitt

**HB 1103** (non-record vote)

House Conferees with Instructions: Lucio III - Chair/Pena/Scott/Thompson/Woolley

**HB 2093** (non-record vote)

House Conferees: Thompson - Chair/Eiland/Sheets/Smithee/Taylor, Van

**HB 3691** (non-record vote)

House Conferees: Gallego - Chair/Christian/Davis, Yvonne/Martinez, "Mando"/Zedler

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 563** (non-record vote)

House Conferees: Torres - Chair/Garza/Harper-Brown/Lucio III/Zedler

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 1112** (130 Yeas, 12 Nays, 2 Present, not voting)

**HB 3302** (144 Yeas, 0 Nays, 1 Present, not voting)

**SB 313** (141 Yeas, 0 Nays, 2 Present, not voting)

THE HOUSE HAS TAKEN THE FOLLOWING OTHER ACTION:

**HB 3109**

Vote reconsidered by which the House concurred in Senate amendments, prevails. The House then moved to not concur in Senate amendments and appointed the following conferees.

House Conferees: Craddick - Chair / Darby / King, Susan / Lewis / Parker

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Memorial Resolutions**

**SR 1208** by Lucio, In memory of Emma Reyna Fuentes of Weslaco.

**SR 1210** by Lucio, In memory of Fernando "Freddy" Ramirez of Raymondville.

**SR 1214** by West, In memory of Boston P. Grant, Jr., of Grand Prairie.

**SR 1217** by Hinojosa, In memory of Alida Salinas Hernandez of McAllen.

**HCR 1** (Uresti), In memory of former Texas governor Dolph Briscoe, Jr.

### **Congratulatory Resolutions**

**SR 1183** by Ellis, Recognizing Robert L. Garner, Jr., founder of the African American National Spelling Bee Championships, Incorporated.

**SR 1184** by Ellis, Recognizing Mary Bello for winning the inaugural African American National Spelling Bee Championships.

**SR 1185** by Ellis, Recognizing Ashley Williams for winning second place honors in the inaugural African American National Spelling Bee Championships.

**SR 1186** by Ellis, Recognizing Niaha Dyson for winning third place honors in the inaugural African American National Spelling Bee Championships.

**SR 1202** by Williams, Recognizing Jennifer and Casey Davis on the birth of their daughter, Kylie Nicole Davis.

**SR 1203** by Van de Putte, Recognizing Fred Carmona for his contributions to the San Antonio community.

**SR 1205** by Wentworth, Recognizing Paul Foerster on the occasion of his retirement after 50 years as a teacher at Alamo Heights High School in San Antonio.

**SR 1207** by Uresti, Recognizing Yolanda Fernandez for winning the H-E-B Excellence in Education Lifetime Achievement Award.

**SR 1209** by Lucio, Recognizing Guadalupe Regional Middle School on the occasion of its 10th anniversary.

**SR 1211** by Van de Putte, Recognizing the men and women who have served our country in the armed forces.

**SR 1215** by Huffman, Recognizing Eric Sermenon on the occasion of his graduation from the Texas School for the Deaf.

**SR 1216** by Huffman, Recognizing Brett Kolaja for his service to the City Council of Missouri City.

### **ADJOURNMENT**

Pursuant to a previously adopted motion, the Senate at 6:51 p.m. adjourned until 10:00 a.m. tomorrow.

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### **APPENDIX**

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### **BILL ENGROSSED**

May 25, 2011

**SB 1929**

**BILLS AND RESOLUTIONS ENROLLED**May 25, 2011

**SB 176, SB 218, SB 220, SB 229, SB 349, SB 364, SB 438, SB 460, SB 479, SB 548, SB 701, SB 762, SB 766, SB 802, SB 804, SB 812, SB 917, SB 975, SB 1009, SB 1360, SB 1386, SB 1477, SB 1504, SB 1560, SB 1617, SCR 2, SCR 58, SR 1129, SR 1130, SR 1131, SR 1172, SR 1173, SR 1174, SR 1175, SR 1176, SR 1178, SR 1179, SR 1180, SR 1181, SR 1182, SR 1187, SR 1188, SR 1189, SR 1190, SR 1191, SR 1192, SR 1193, SR 1194, SR 1195, SR 1196, SR 1197, SR 1198, SR 1199, SR 1200, SR 1201**

**SENT TO GOVERNOR**May 26, 2011

**SB 19, SB 29, SB 43, SB 166, SB 233, SB 234, SB 266, SB 267, SB 304, SB 350, SB 367, SB 422, SB 449, SB 461, SB 471, SB 481, SB 489, SB 554, SB 577, SB 578, SB 609, SB 627, SB 650, SB 682, SB 735, SB 791, SB 792, SB 799, SB 864, SB 889, SB 898, SB 900, SB 901, SB 959, SB 966, SB 987, SB 1020, SB 1030, SB 1044, SB 1046, SB 1106, SB 1133, SB 1167, SB 1176, SB 1220, SB 1231, SB 1273, SB 1308, SB 1322, SB 1330, SB 1342, SB 1368, SB 1438, SB 1441, SB 1480, SB 1484, SB 1493, SB 1521, SB 1522, SB 1557, SB 1596, SB 1681, SB 1737, SB 1787, SB 1789, SB 1807, SB 1812, SB 1857, SB 1875, SB 1880, SB 1915, SB 1928, SCR 35, SCR 51**